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# The Collection of Hindu Law Texts

Vol. II. Part III.

## YĀJÑAVALKYA SMRTI

WITH THE COMMENTARIES OF

- (1) The MITĀKSHARĀ by Vijnānesvara Bhikshu
- (2) The VIRAMITRODAYA by Mitramisra

AND

- (3) The DīPAKALIKĀ by Sūlapāṇi

Vyawahārādhyaaya.

Chapters I-VII ( Pages 631-976 )

An English Translation with notes, explanations etc.

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Second Edition

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## PREFACE.

As announced last year when the second part of the Achārādhya was published, the first part of the Vyawahārādhya is now being issued. This portion consists of Chapters I-VII which give the General and Special Rules of Procedure, the laws of Debt, Pleiges, and Deposits, and the provisions as to Witaesses, Documenta, and Ordeals. It will thus be seen that the portion now issued is this Part consists of the Procedure or the Adjective law of the Smṛti. The next Part which will consist of Chapters VIII-XXV contains the Substantive portion of the Smṛti.

As announced before, the translation now issued consists of

- (1) The Original Smṛti of Yājñavalkya.
- (2) The commentary called the Mitākṣharā by Vijñesvara.
- (3) " " " Viramitrodaya by Mitramisra and
- (4) " " " Dipakalikā by S'filapāni.

In the First Edition which was issued in 1914, only the Smṛti of Yājñavalkya and the Mitākṣharā were included in the translation.

The two commentaries of the Viramitrodaya and the Dipakalikā were subsequently secured from the Library of the India Office. The commentary of the Viramitrodaya has also been published in the Choukhambha Sanskrit Series of Benares and the Dipakalikā is being published in entirety in this Series. It will be remembered that the translation is being issued in handy volumes of about 400 pages for the convenience of subscribers.

The Second Part of the Smṛtimuktāphalam by Śri Vaidyanātha-Dikshita is also being sent out along with this volume.

The next instalment will consist of:

(1) The English Translation of the remaining portion of the Vyawahārādhya of the Yājñavalkya Smṛti, with the three Commentaries.

(2) The Sanskrit Text of the Dipakalikā by S'filapani.

The assistance of my son Bal has, as usual, been of much use.

Girgaum, Bombay. }  
18th March 1938 }.

J. R. GHARPURE.  
Editor.

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SRI  
YAJÑAVALKYA-SMRTI  
TOGETHER WITH THE COMMENTARY CALLED  
MÎTÂKSHARÂ  
OF  
SRI VIJÑÂNESWARA  
AND THE COMMENTARIES  
OF  
VIRAMITRODAYA BY MITRÂMIS'RÂ  
AND  
DÎPAKALIKÂ BY SÛLAPÂNI

SECOND BOOK

ON VYAWAHÂRA: POSITIVE LAW.

Chapter I.

OF THE RULES OF PROCEDURE IN GENERAL.

Introductory.

Of a king possessing the (necessary) qualifications of anointment &c. the protection of the subjects is the highest duty; that, (i. e. the protection) however, is not possible without punishing the guilty. The detection of the guilty, moreover, is not possible without the administration of justice (Lit. holding a trial). That suits should be tried daily has already been said<sup>1</sup> viz. that "a king should attend personally to the administration of justice every day, surrounded by (or with the help of) the Councillors." The various details of a trial viz. its nature, its kinds, and its procedure have, however, not been described, and the Second Book is being commenced for describing these. 10

Yâjñavalkya, Verse 1.

The king, divested of anger and avarice, should administer justice along with learned Brâhmaṇas, in conformity with the principles of legal science.

1. Ächâradhyâya Verse 360.

Mituksharā:—*Vyawahārā*, &c. judicial trials &c. a complaint against another and having relation to one's self is a *Vyawahāra*. As for example—where a certain

1. The word व्यवहार—has been severally explained from several points of view, viz. (1) Its intrinsic character, (2) Its function, (3) Its functionaries, (4) Its component parts, (5) The means by which a suit is decided, (6) Its kinds, (7) The results, (8) Its defects or flaws &c. and (9) The time and place.

5 It is therefore necessary to note its aspects from all these points of view:—

I. Its intrinsic character, Kātyāyana gives a derivative meaning thus:—

वि नानां अव योद्देहे दृष्टं हार उच्यते । नानाप्रेरेद्युपात् द्यवहार इति स्मृतः ॥ ३६ ॥

Yājñavalkya: यज्ञवालये योद्देह नानां भवितः विद्यते । अवेरेद्युपात् द्यवहार इति स्मृतः ॥ (अ. ५)

Vyawahāra, Mayukha, विविधायवाचनात्मागतः नानाप्रेतान्विकला व्यवहारः (प. १ पृ १२).

10 II. The functional aspects have been stated by Kātyāyana (21).

प्रत्यनसामेव विचित्रेण वर्षाण्डे व्याविस्ते । समध्यान्तेऽत्र यो वाक्ये व्यवहारः ए उच्यन्ते ॥

Nārada.. एवं वदवाराम व्यक्तिं राजशासनम् । चतुर्पादाहोऽप्यमुनः वूर्षापापः ॥ (I, 10)

III. Its functionaries.

राजा राजुकः राजः शास्त्रं गणकलेखकः । हिंदूप्रथमिकाकमादः राजशासनः ॥

15 IV. Its component parts: Nārada—(I, 8-9)

ए चतुर्पादाहोऽप्यमुनः राजः ए च । चतुर्पादाहोऽप्यमुनः चतुर्पाद विनि कीर्त्यन्ते ॥

अटाप्रोत्तिरात्रः राजशासनवेच च । विवेचित्यमित्येव द्युद्वारी द्विगतिरात्रा ॥

See also Yājñavalkya Verse 8 further on

V, VII, VIII. The means, results, and flaws. Nārada (I, 12-13)

तामुत्तुपादाहोऽप्यमुनः राजः उच्यन्ते । चतुर्पादाहोऽप्यमुनः च राजाः स चतुर्पादः ॥

पर्वतयो वासिनिप सम्भान् र जाननेच च । व्याप्तिं विनि पादः विवाचतुर्पादी ततः स्मृतः ॥

पादो गच्छति कर्त्ता वादः वासिनिपृष्ठति । पादः समाहृतः सर्वात्मदो राजामुत्तुपादति ॥ (III, 12)

पर्वतपर्वतम यदाशो लेप्तव्युत्तेष्व च । चतुर्पादः कर्त्तो विवेच्यते चतुर्पादानी पक्षीतिः ॥

Bṛhaspati: केवलं वाचायामित्य न कर्त्तयो विवेच्यते । तु किंचित्वे विवेचे तु व्यवहारानि पजायने ॥

25 Gauḍama (११, ११, १३, २०)—“वेदे धर्मशास्त्राद्यद्वान्युपर्येत् द्युताग्रद” (also, “व्याधिगमे तकोऽप्युपागः । तेन गृह्ण व्याधिगमे गमयेत् । विवेचित्यै विविष्यद्यः व्यवस्थात्वं निर्णय गमयेत् ”).

Bṛhaspati : (६, १७-१८)

द्युपकारा किंवा मोक्षा वाचुरी वैरिकी तथा । साक्षित्वाचाचुपानि च वाचुरी विविषा स्मृता ।

and Nārada says पटाचारा वर्षजात्म च वैरिकी न यतो स्मृता ।

30 वर्षशाप्तप्रशास्यायामविदेष्व भार्गवः । सप्तिक्षेपाणो निर्णय व्यवहाराति नयेत् ॥

प्रतिशोतरं त्रयैहेतुप्रथमशब्दानिर्णयवोजनात्मको व्यवहारः, मिताक्षरा प. १ पृ. २६.

VI. Its kinds have been given by Manu as 4 kinds, Ch. VIII. 4-7 see page 634 further on. Nārada enlarges these to 108, see I, 20.

35 VII. As to the result note thus text of Hāritī

स्वप्रसरं यत्ता मात्रः पर्वतपर्वतमेव । यद्यमेव यत्तो व्यवहारः स उच्यन्ते ॥

Aparārka—describes it as ‘consisting of the plaintif, the answer of the defendant, and the evidence’ वादिविवाचिनीः किंविषमः ।

Nārada तत्र सम्बोधिते विवेच्य वादवाच्यान्वयात् । चार्यं चूलकरणे राजाशासनं तु राजशासनम् ॥

पादो गच्छति कर्त्ता वादः वासिनिपृष्ठति । वादः समाहृतः सर्वात्मदो राजामुत्तुपादति ॥

चौप्रोत्तिरात्रः जापेत् व्यवहारः । चूक्ष्मं विवेचे विवेच्य माणव्यभीतीं गतः ॥

40 IX. As to the time, Kātyāyana observes,

व्याधिगमे व्यवस्थापादात्मव्यवहारः व्यवहारः । एव काले व्यवस्थाय वाचिं इती मनीषिभिः ॥

Bṛhaspati describes the place of justice thus:—

पूर्वमेव एहं कुर्यामलतूरामेवं वृषक । पादविद्वा प्राद्युम्भीं तत्प लक्षण्ये प्रत्येकमात्रम् ॥

Vyawahāra  
defined.

person says that the land &c. is his, and any other also says in contradiction to him, that it is his. The Author indicates its i. e. of the Vyawahāra-

variety by the (use of the) plural. By the word nṛpa, i. e. king, the Author indicates that this is not the duty of the kshatriya order alone, but also of any other endowed with the authority to govern the subjects. 5

Pasyēt—should administer, &c. is a repetition (by way of corroboration) of what was said before and is intended as laying down a special duty.) Vidwadbhīh, along with the learned,—with (the help of) those (who are) well-versed in works on 10

Brāhmaṇāḥ.

legal science and the Vedas, grammar &c.

Brāhmaṇaiḥ, with Brāhmaṇas,—not Kshatriyas or others. By the expression, 'Brāhmaṇas' introduced by the Instrumental case, their subordination is indicated, from the grammatical 15

aphorism<sup>1</sup> 'conjunctive use with Saha (the preposition with) indicates subordination.'

Hence, in the case of absence of an investigation, or for a false decision, the fault would be that of the king, and not of the Brāhmaṇas. As observes Manu:—“A king, punishing the innocent (Lit. unpunishable), and not punishing the guilty (Lit. deserving punishment), brings great infamy on himself and goes to hell”. By what procedure (should he try suits)? dharmasāstrānūṣārepa, in conformity with Dharma-Sāstra<sup>2</sup> (Science of religion and law) and not with the science of politics. The established usage and law of the country &c. have not been separately mentioned, as they form a part of the subject matter of legal science, in so far as they (such usage and law) are not inconsistent with the general principles of legal science. And as the sage Yājñavalkya has said<sup>3</sup> later on, “a custom which is not opposed to law should be carefully maintained, as also the law or usage made or established by the king”. Krōdha-lōbhā-vivar-jitāḥ, &c., divested of anger and avarice &c.. When it is established that it (i. e. the administration of justice) should be in 20

25

25

30

1. Pāṇini. II,-3-19. (प्रत्यक्षेत्यादि ।)

2. Ch. VIII. 128.

3. For the extent and scope of the expression Dharma-Sāstra see the General Note on the Hindu Law Texts.

4. Bk. II. 186.

conformity with the principle of legal science, the mention of the additional condition (that the king should be) "divested of anger and avarice" is indicative of a *special injunction* (आदरार्थम्) Krôdha anger—intolerance. Lôbha avarice—excess of greed. (1).

## 5 Viramitrodaya.

"The judicial proceedings, he himself should investigate, surrounded by the councillors, every day", what has been thus stated<sup>2</sup> in the last Book, the Author now elaborates in detail by a separate Book.

## Yâjñavalkya, Verse, 1.

10 Here, although the investigation of a judicial trial has been stated in the last Book, still a judicial trial with all its parts being set out in this Book only, it is called the Book on Vyavahâra. There, moreover, these are the Chapters: viz.

	I. Chapter on the Rules of Judicial Procedure. Verses 1-36.	XIII. Breach of Contract of service. 182-184
15	II. Payment of Debts—Verses 37-64.	XIV. Breach of Contract. 185-192.
20	III. Deposits. Verses 65-87.	XV. Non-payment of Wages. 193-198.
	IV. Witnesses. Verses 88-83.	XVI. Gambling and Betting. 199-203.
25	V. Documents. 84-94.	XVII. Sloader and Abuse. 204-211.
	VI. Ordeals. 95-113.	XVIII. Assault. 212-220.
	VII. Partition of Dâya. Verses. 114-149.	XIX. Sâhasas. 230-233.
	VIII. Boundary Disputes 150-158.	XX. Non-delivery after Sale. 254-258.
30	IX. Disputes between the own- ers and keepers (of cattle) Verses 159-167	XXI. Partnership. 259-265.
	X. Sale without ownership. Verses. 168-174.	XXII. Theft. 266-282.
35	XI. Non-completion of gifts. Verses 175-176.	XXIII. Protection of Women. 283-294
	XII. Rescission of a Sale. 177-181	XXIV. Miscellaneous. 295-307

1. The meaning is that the king is asked by the general law that he should administer justice according to religion and law, but in particular he is asked to cast off all anger and avarice.

2. See verse 360 Achâradîyâna p. 620 above.

3. Viśvârûpa makes it further clear: एकत्रेऽपि द्युष्मानाय इतीयदिवोत्तरेत्या वहृष्टवन् । यथा ह सत्: 'तेषामाप्यसूणादृशः'— नारदः 'चतुर्थाद्युष्मानं पी'—

Vidwadbhi, 'along with the learned', i.e., men well conversant with the principles of legal science; Brāhmaṇaiḥ, 'with the Brāhmaṇas'; saha, 'along with'; nṛpah, 'the king'; from anger and avarice being particularly averse; Dharmāśāstra-nusārena, 'in conformity with i.e., without detriment, to Dharma and Śāstra, "Dressed in decent attire, the king after going to the court house, with close attention, being seated with face towards the East, should investigate the cases of litigants" in this and the like manner, enunciating the plaint and the answer, pas'yet, 'should administer', i.e., should investigate.

By the word *nṛpa*<sup>2</sup> is included one even other than a Kshatriya, 10 who is a protector of subjects. Brāhmaṇaiḥ is the principal course. If that is not possible, then along with Kshatriyas or Vaiśyas also, as has been stated before.<sup>3</sup> The particular mention of Dharmāśāstra is with a view to point out its chief importance; for in the investigation, the science of polity may also have to be followed. That has been stated 15 by Kātyāyana<sup>4</sup>: "By those experts in the Dharmāśāstra and versed in Arthaśāstra". On a conflict between the Dharmāśāstra and the Arthaśāstra, however, the greater or lesser potentiality will be stated later on.

As to the etymology of Vyavahāra, Kātyāyana<sup>5</sup> says: "Vi, has the sense of many; ava, means doubt, haraya or removal is expressed by hāra; 20 by reason of the removal of several doubts, it is known as Vyavahāra."

That, moreover, of this character is of two sorts. As says Nirada<sup>6</sup>: "Attended by a wager, and not attended by a wager; this should be known to be of two kinds. It is 'attended by a wager' where a party takes in writing a certain sum which has to be paid besides that in 25 dispute." "He who is defeated in this proceeding, shall pay so much

1. See Kātyāyana Verse, 55.

2. i.e. who occupies the position of a Ruler of the people.

3. See Page 621 lines 14-21.

4. Verse 57. By adopting this quotation from Kātyāyana, it is indicated that the study of the principles of Political science was a necessary part of the accomplishment of one to be appointed to investigate cases.

5. Verse 26.

6. Introduction 4. With this aspect of a suit the student may with advantage compare the *Actio Sacramentum* of the Roman Law. The two resemble in both aspects.

penalty to the successful party or to the king" is this or a similar form where a condition or wager like this is laid before the writing down of the Plaintiff, that is "a suit with a wager"; one other than this is "a suit without a wager".

5 It has been stated: "in accordance with the *Dharma S'âstra*"; there, the Author mentions the position of the *Dharma S'âstra*, i.e., by reference to the entire treatise. Thus indeed becomes congruous the mention hereafter of the witnesses, disputants, &c., since these are incorporated into the *Dharma S'âstra*. (1).

10

**S'nlapâni**

In regard to the Recovery of Dâths and several other titles at Law such doubts as arise are removed by this, and therefore, this deliberation which removes doubts as to the several points is called *Vyavahara* or a Judicial proceeding. So Kâtyâyana:<sup>1</sup>—*Vî*, has the sense of many; 15 *ara*, means doubt; *harana* or removal is expressed by *hûra*; by reason of the removal of several doubts, it is known as *Vyavahara*." Tâñ, these judicial proceedings, the Lord of the land, should himself personally investigate, and in company with the Brâhmaṇas knowing the *Dharma-Sûtra*. In accordance with the rules of the *Dharma-Sûtra* regarding the 20 Plaintiff, the Answer, the Proof, the Trial and the Decision, and not through anger, or hatred, nor through avarice, nor by partiality. Although it has been said that the king should himself investigate<sup>2</sup> judicial proceedings, still this is a subsidiary condition of the principal point viz. investigation according to the principles of *Dharma Sûtra*. (1)

25

**Yâjñavalkya, Verse 2.**

A king should select as his Councillors<sup>3</sup> those persons who have become accomplished by learning and study<sup>4</sup>, who know the law, who speak the truth, and who are the same<sup>5</sup> to friends and foes alike. (2).

1. Verse 26.

2. Verse 350. निर्गमेत्—The use of this expression has the sense of investigation carried to a decision.

3. अस्माक्याणि युग्मदिवान्यर्थमयमत्प्रवादः—युग्म and अत्प्रवाद—The principal of the chief point is युग्म, and the subordinate or subordinate one is अत्प्रवाद.

4. The words *Councillors* and *Assessors* are separately used here to bring out the distinction between संयुक्त (appointed) and अनियुक्त (unappointed). The word संयुक्त stands for those who are appointed, and has been translated as *Councillors*. The word *Assessors* refers to those learned Brâhmaṇas who voluntarily go to a court and are referred to in verse 1, above. Cf. the *Judex*, and the *Recuperatores* of the Roman system.

5. I. e. of the Vellis.

6. Impartial to friends and foes as well.

Mitāksharā.—Further, S'rutēna, by learning, by study-ing the Mimānsā (the science of Interpretation),  
Grammar etc; and also adhyayanēna, by study,-  
i. e. the study of the Vedas; sampannāḥ, accom-

plished; dharmajñiyāḥ, knowing the religion, i. e. those who know religion and the science of law; satyawādināḥ, who speak the truth, i. e. who have (established) a character for speaking the truth.

Ripau mitre cha ye samāḥ, same to friends and foes alike, unaffected by feelings of hatred, love &c. Men of this description should be invested 5  
Sahyās (Coun-cillors) described. ns concillors by the king, after conferring upon them gifts, and other tokens indicative of respect, that they may 10  
(become fit to) attend or sit in the meeting or assembly, sahāsadaḥ.—

Although the expression 'accomplished by learning and study' has been used without particularisation, still Brāhmaṇas only (are meant). As says Kātyāyana<sup>1</sup> :—"Moreover, he (i. e. the king), accompanied by assessors or councillors, who are steady, special scholars, of high parentage, and who are the best of Brāhmaṇas, who are clever in interpreting the meaning of Dharma Sāstra, and who are accomplished in politics."

Those to be selected, moreover, should be three, the plural having been used with a (special) purpose; and also there being a text of Manu<sup>2</sup> viz:—"In the place where three Brāhmaṇas, versed in the Vedas, sit down." Brhaspati<sup>3</sup>, however, intimatiog that the councillors should be seven, five, or three, observes: "Where, Viprās (Brāhmaṇas) knowing the usage of the people and the Vedas, as well as the law, and being either seven, five, or even three, are sitting, that assembly is equal (in Sanctity) to a sacrificial assembly". It should not, moreover, be supposed that (the words) "accomplished by learning and study" and others, are adjectival of Brāhmaṇas referred to in the last verse in (the expression) "along with Brāhmaṇas," it being impossible that words having the Nominative and the Instrumental termination at their end, should be connected as an adjective and the word qualified (by it), as also on account of the possibility of the fault of repetition being committed by the use of the expression "by the learned".

Moreover, Kātyāyana<sup>1</sup> has brought out clearly the distinction between the Brāhmaṇas and the Councillors thus :—"A king attains heaven, who investigates disputes according to law, with the help of the Chief Judge, the minister, the religious preceptor, the Brāhmaṇas, and the Councillors." There, the distinction is that the Brāhmaṇas are not appointed, while the Councillors are appointed. Hence also it is said<sup>2</sup> "whether appointed or not appointed, he who knows the law is entitled to speak".

Among these, those who are appointed should advise the king on the facts as they stand, and if he would act otherwise, then they should dissuade him, otherwise they would be guilty. Kātyāyana<sup>3</sup> has also said :—"The councillors who follow him, even when he acts with injustice, are co-sharers with him in it (the injustice); therefore the king should be warned (advised) by them." Of the unappointed, however, the sin occurs only when they speak a falsehood, or do not speak at all; not when they do not dissuade the king. As Manu<sup>4</sup> has said :—"Either the court must not be entered, or the truth must be spoken; a man who either speaks nothing, or speaks falsely becomes sinful (guilty)." Ripau Mitrē Chēti, to friends and foes, &c., in this clause by the (use of the) word *cha* is indicated that the court should also have the attendance of a few merchants for the satisfaction of the people. As says Kātyāyana<sup>5</sup> : "Attended by a few tradesmen of good family, free from malice, and possessing the qualification of high birth, character, age, good behaviour and affluence, and family tradition." (2).

### Viramitrodaya.

There, moreover first, in regard to the statement "along with learned Brāhmaṇas" while explaining the learning, the Author discusses the Brāhmaṇas

### Yājñavalkya, Verse 2.

*Srutam*, 'learning', i.e., with the help of the Mīmāṁsa and the like, understanding the meaning; accompanied by that, with the study of the Veda and Sūtra, accomplished, i.e., possessed. Therefore also *dharmajñidh*, 'who know the law', i.e., who are clever in discriminating the *dharma* and the non-*dharma*; and therefore also who have a character for truth-speaking. *Ye ripau mitre cha samdh*, 'who are the same to foes and friends alike' devoid of hatred, anger, etc., those

1. Verse 56, see note 4 on p. 836

2. By Nārada III, 11.

3. Verse 75.

4. Ch. VIII. 13.

5. Verse 58.

Brahmanas should by the king be made councillors, i.e., who will attend the courts. The meaning is that honour and respect, etc., should be so ordained for them that they may attend the court for the deliberations. By the use of word *cha*, 'and', are included the indifferent.

By the use of the plural number, the Author intends the particular number stated in other Smritis. So, moreover, Manu<sup>1</sup>: "In the place where sit down three Brahmanas knowing the Vedas." Bṛhaspati<sup>2</sup> also: "seven, five, or three may be the Councillure." Really, however, the inclusion of the unappointed Brahmanas having been stated before, even apart from those, this verse is intended to direct others to be made 5 councillors. Hence it is that the Chief Justice, and the ministers, together with the Brahmanas and the Purohits have been stated by Kātyāyana<sup>3</sup>. After premising the investiture, it has been stated: "Attended by a few merchants of good family, possessing the qualifications of high birth, character, age, good behaviour and affluence, and free from malice." 10 By Manu<sup>4</sup> also has been said:—"In transactions between tradesmen and artisans, and also among persons subsisting on agriculture, or on the stage, where a decision is impossible to be reached, it should be got done by the experts in the lines themselves." This is only indicative. The point is that whoever is a specialist in a particular matter, by him 15 indeed that matter should be got decided.

Bṛhaspati<sup>5</sup> mentions persons necessary for (a court of) justice: "The king should appoint two persons—an accountant, and a scribe—who know the principles of the science of words and names, have studied the lexicons, who are skillful accountants, who are pure, and who are acquainted with the various alphabets. For summoning and guarding the witnesses, the plaintiff, and the defendant, a truthful and confidential man should be appointed, subject to the authority of the Councillors<sup>6</sup>." (2)

### S'nlapāpi

The Author mentions the counsellors

Yājñavalkya, Verse 2.

Accomplished with the knowledge and the meaning of the Vedas, and the study of the Vedas; who know the *Dharmaśāstra*; and who by habit

1. Ch. VIII. 11.

2. Ch. I. Verse 11.

3. Verse 58.

4. This verse is not found in Manu; see however Bṛhaspati I. 26.

See Raghunathji Tarachand vs. Bank of Bombay I. L., R. 34 Bom. 72, at p. 78.

5. Ch. I. Verses 14, 15.

6. साम्परितः

are truth-speakers; those who are of an even mind towards an enemy as also to a friend; such should be appointed councillors.

5 Kâtyâyana<sup>1</sup> states a special rule: "He, moreover, accompanied by councillors, who are steady, special scholars, of high parentage, and who are the best of Brâhmaṇas, who are experts in the *Dharma Sâstra*, and are accomplished in the science of polity; along with the chief judge, the minister, the religious preceptor, the Brâhmaṇas, and the councillors, the king who investigates disputes, attains heaven, and retains it according to Dharma." (2)

10 It has been laid down that 'the king should administer justice'; the Author mentions a secondary course

### Yâjñavalkya, Verse 3.

15 Unable to attend to the administration of justice on account of other engagements, by a king should be appointed (in his place) to work along with the Councillors, a Brâhmaṇa, knowing all laws.

20 Mitâksharâ :—On account of his being engrossed in other works, *vyawahârân apas'yata*, unable to attend to the administration of justice; *nripeṇa*, by a king; *sabhyaiḥ saha*, along with the Councillors, referred to above, *sarvadharmavit*, knowing all laws, all laws i. e. laws laid down in the *Sâstrâs*, as also the customary laws; knows i. e. (considers) discriminates; such a one is he who knows all laws; Brâhmaṇa, a Brâhmaṇa, and not a *kshatriya* or any other; *niyoktawyah*, should be appointed, for deciding disputes.

25 Moreover, such a one possessing the particular qualities laid down by Kâtyâyana<sup>2</sup> should be made. Says he :—"He should be self-restrained<sup>3</sup>, high-born, impartial, not overawing, calm, god-fearing, religious, and devoid of anger."

1. Verses 57, 58.

2. See Verse 64.

3. अति॒ रुद्र॑. The other reading is अति॒ विग्नि॑.

In the absence of a *Brāhmaṇa* of this description, he should appoint a Kṣatriya, or a Vais'ya, but not a Sūdra. As says Kātyāyana<sup>1</sup>:—“Where a Brāhmaṇa is not available, he (i. e. the king) should appoint a Kṣatriya, or a Vais'ya who knows the *Dharma-S'āstra*; a Sūdra should be avoided by all means.”

By Nārada<sup>2</sup> also this very thing has been indicated prominently :—“Placing before him *Dharma-S'āstra*, and adhering to the opinion of the Chief Judge, with a calm mind (or concentrated attention), he should decide suits in due order.” Adhering to the opinion of the Chief Judge, i. e. not posting himself in his own opinion. (As in the expression, ‘the king observes the enemies’ army with the eyes (in the form) of spies’, the term Chief Judge is here used in its etymological sense. He who questions the plaintiff and the defendant is a *prātī*; and he who sifts or discriminates their statements, the inconsistent from the consistent along with the assessors, a *vivikā*; he who is a *prātī* as well as a *vivikā* is a *Prādvivikā*. Moreover, it has been said:<sup>3</sup> “He is called *Prādvivikā*, because, after consulting him, the king, in company with the councillors, decides disputes after an inquiry relevant to the matter at issue.” (3)

### Viramitrodaya.

“Judicial proceedings he should himself personally investigate” thus it has been stated in the Inet hook. When, however, that is not possible, the Author mentions a course

25

### Yājñavalkya, Verses 3.

Owing to being absorbed in concentrating himself upon other matters and therefore unable to investigate judicial proceedings, by such a king, along with the councillors, a Brāhmaṇa knowing all laws and rules useful for a lawsuit should be appointed for the purpose of investigating law suits. This is the meaning. Here Kātyāyana<sup>4</sup> states a

1. Verse 67.

2. Ch. I. 35.

3. By Vyāsa. See Smṛti Chandrikā, P. 17, I, 3,

4. Verse 64.

special rule. "One who is self-controlled, well-born, impartial, not likely to create distrust, who is firm, afraid of the next world, devoted to religion, industrious, and devoid of anger." In the absence of such a Brāhmaṇa, n Kshatriya, or a Vais'ya should be appointed, so has been stated above.

5 So says Nārada<sup>1</sup>: "The affairs of the ascetics should be got determined by only those who are learned in the three lores, as also of those who are versed in sorcery and witch-craft; and not himself, for fear of creating resentment." The meaning is that those from whose anger there may occur danger, the investigation of (the 10 disputes of) these should be caused to be made through men of their kind alone.

Even when a determination is made by himself, the co-operation of the Chief Judge is certainly contemplated. So observes Nārada<sup>2</sup>: "Placing before him the Dharma-S'āstra, and adhering to the opinion 15 of the Chief Judge, he should decide suits in due order, with a calm, i.e., concentrated mind." (3).

### S'ūlapāṇi.

When the investigation of disputes is not possible to be made by himself personally, the Author states a course

One knowing well all laws i. e. of the country, the caste, and the rest. In the absence of a proper Brāhmaṇa, a Kshatriya, or a Vaiśya may even be appointed, as says Kātyāyana<sup>3</sup>: "If a learned Brāhmaṇa is not available, one may appoint there a Kshatriya, or a Vaiśya who 25 knows the Dharma-sāstra; a śudra, one should avoid with effort." So also Mānū<sup>4</sup>: "A Brāhmaṇa who subsists only by the name of his caste (jāti), or one who merely calls himself a Brāhmaṇa, may interpret the law of the king, but never a Śudra. Of that king the administration of whose laws is made by a Śudra, the kingdom will sink 30 (low) like a cow in the mud." (3)

1. Not found in Nārada, but see Bhāṣapati, I. 27.

2. Ch. I. 35.

3. Verse 67.

4. Ch. VIII. 20-21.

The Chief Judge and the other councillors if out of passion &c. decide a dispute in departure from the dictates of the Smritis, then what should a king do? so the Author says

## Yâjñavalkya, Verse 4

4. Out of passion, avarice, or even through fear, councillors acting in departure from the rules of the Smritis or from a similar cause, should each be separately punished with a fine double of that in dispute.

Mitâksharâ :—Moreover, the aforesaid *Sabhyâh*, councillors, on account of the uncontrolled sway of *Rajas*<sup>1</sup> or passion, being affected by it, *râgât*, *out of passion*, i.e., on account of excessive attachment; *lobhât*, *from avarice*, i.e., on account of excess in greed; *bhayât*, *from fear*, or on account of excessive tribulation, *smṛtyapetam*, *in departure from the Smritis* i.e. opposed to the Smritis. The term *Âdi* or *from a similar cause*, indicates doing something which is a deviation from custom; *prthak prthak*, severally, each one severally. *Vivâdât*, *of that in dispute*, of the amount accruing as damages on account of a defeat in the suit; should be punished with a *double of the fine*, *dwigūnam damam*; not however (double) of the amount which is the subject matter of dispute. If it were so, there would be the possibility of an absence of fine in disputes regarding adultery or seduction and the like. The use of the words passion, avarice and fear is to limit the double fine to (the cases of) passion &c. only, and not to (extend it to the case of) ignorance, mistake &c.

Moreover, let it not be supposed in consequence of the text of Gautama<sup>2</sup> viz. "a king has power \* [P. 3. L. 16.] over all, excepting Brâhmaṇas," that Brâhmaṇas, are exempt from punishment, as the text is intended to be eulogistic only.

As to what has been said<sup>3</sup> viz., 'that he (i.e. a Brâhmaṇa, should be exempted by the king from six (punishments), viz. that he should not be killed, imprisoned, punished, exiled, deported or

1. The second of the three qualities viz. *Satva*, *Rajâs* and *Tamas*;

2. Gautama 11, 1.

3. Gautama VIII. 12, 13.

made destitute (deprived of his effects),<sup>1</sup> that holds in the case of one<sup>2</sup> " who is a well-read scholar, one who knows the usages of the people, who is versed in the Vedas and the Vedangas, who is an expert in the art of controversy (or in expounding controversial points), in History and the Pñtâgas, who is a constant student of the same, and who follows them in life, who is purified by the forty-eight purificatory ceremonies,<sup>3</sup> who devoutly observes the three duties<sup>4</sup>, or one who has been trained in the six<sup>5</sup> customary duties of life." Thus it (i.e. the exemption) applies only to one who has acquired a versatility of knowledge as detailed above and not to any Brâhmaṇa merely as such. (4)

### Viramitrodaya.

For the Councillors giving an unjust decision, punishment should be administered by the King; so the Author says

15

### Yâjavalkya, Verse 4.

On account of being oppressed by passion, etc., in departure from the *Smritis*, i.e., opposed to the *Smritis*—by the use of the word *ddi*, etc., 'opposed to the usage of the country' &c. also should be included. *Sabhyâh*, 'Councillors', for the purpose of investigation appointed to the assembly, as far as the Chief Judge, *prikhak pthak*, 'separately' each one, *citddat*, 'of that in dispute, consequent upon a defeat in the dispute under consideration, from the penalty in the form of no imposition of a money fine, *dwigupam damam*, 'double the penalty', *dandyâh*, 'should be punished', i.e., should be made to pay.

25 By the use of the word *api*, 'or also', are included those not known. So says Kâtyâyanî: "After correctly comprehending the result of the suit, the Councillor should then speak; otherwise one must not speak; he who speaks gets twice the penalty. By reason of the

1. Gautama VIII. 4-11.

2. viz. Gautama details these at Ch. VIII. 14-22.

3. These are: study, sacrifice, and almsgiving (अध्ययनप्रयादानानि).

4. These are: the three last with the addition of अध्यापनप्राजनप्रतिप्रदा: Teaching, officiating at a sacrifice, and receiving gifts. See Yâjavalkya I. 118.

5. Verse 80-81.

fault of the Councillor, whatever is lost, should he replaced by the Councillor as it was before ; a dispute, however, when settled by the disputants themselves, one should not investigate."

Thus what has been decided after a proper deliberation may be considered again, and no penalty (should be imposed) out of irritation due to the defeat of the plaintiff. 5

There, "Councillors declaring an unjust decision, and similarly those who subsist on bribes, as also those who are guilty of a Breach of Trust, all these must certainly be banished", the (rule of) punishment thus declared by Brhaspati should be observed. (4). 10

## S'ulpapi

Yājñavalkya, Verse 4.

These, the councillors declaring falsely, should each be punished with the penalty double that for the defeated party. By the use of the word *api* 'even' is included one digressing away from the judicial proceeding (4). 15

The Author mentions the nature of a *Vyaawahāra*

Yājñavalkya, Verse 5.

If one injured by others in a way which is a violation of the (laws of) Smṛtis and usage, informs the king, that becomes a (fit) subject for a Judicial Proceeding. (5) 20

Mitāksharā :—Mārgēṇa, in a way, opposed to legal science and general usage, paraiḥ, by others, Subject-Matter ādharshitah, injured, i.e.: attacked; which, rājñe, of a suit. to the king, or to the Chief Judge, āvedayati, 25 informs, i.e. respectfully complains, Chet, in case,

of that, tad, which forms the complaint, is the *subject matter of a judicial proceeding*, Vyaawahārapadam. Vyaawahāra or a judicial proceeding is that which has for its component parts, the plaint, the answer, the doubt, reasons, deductions, the evidence, the decision and the reasons thereof; its pada, its (i. e. of *Vyaawahāra*) subject. This is its general definition. 30

That (*Vyaawahāra*) moreover, is twofold : a plaint founded on suspicion, and a plaint founded on facts. As says Nārada<sup>1</sup>:—" A

plaint is known to be of two kinds ; a plaint founded on suspicion, and a plaint founded on facts ; (on) auspicium in consequence of (defendant's keeping) had company ; (on) facts, when the stolen goods have come to light". By *Hodhā* is meant, the goods stolen or any other evidence (thereof). By "goods coming to light", therefore is meant, tracing (the offence) by circumstantial or direct proof. A plaint founded on facts is moreover two-fold ; (1) Containing the statement of a denial ; and (2) containing the statement of an active wrong (by the defendant). As e. g. "Having taken gold &c. from me, he (the defendant) does not give it back.", "He (the defendant) deprives me of my land &c." Kātyāyana<sup>1</sup> also has said :—"who does not himself wish to do what is just, or does an unjust act."

This (*Vyaicahāra*) moreover is divisible into 18 kinds. As says Manu<sup>2</sup> :—"Of these (1) the first is the Recovery of debts ; (2) Deposit, (3) Sale without ownership, (4) Concerns of several partners together, (5) and Resumption of gifts. (6) Non-payment of wages, (7) Breach of contract, (8) Rescission of sale and purchase, (9) Disputes between the owner (of cattle) and his servants ; (10) the law of Boundary-disputes, (11) Assault, (12) and Slander ; (13) Theft, (14) Heinous offences. (15) Adultery or seduction ; (16) Duties of husband and wife ; (17) Partition ; (18) and Gambling and betting. These are in this world the eighteen topics of Judicial Proceedings. Even these have become multiplied into many more by the varieties of the points at issue. As says Nārada<sup>3</sup> :—"Their branches amount to one hundred and eight. It (a judicial proceeding) is said to have a hundred branches on account of the multifariousness of human transactions."

The author points out that by the expression 'if he informs the king' is meant, he himself voluntarily goes and informs, and not under instigation of the king or his servants. As says Manu<sup>4</sup> :—"Neither the king nor any servant of his shall themselves cause an

1. Verse 139. रात्रेः is another reading.

2. Ch. VIII. 4-7.

3. I. 20.

4. Ch. VIII. 43.

action (lawsuit) to be started, or hush up one that has been brought by another.”<sup>1</sup> Paraiḥ, by others, i. e. by one, two, or many others; the Author indicates hereby that a dispute may arise between one man, and one, two, or many men. The text of Nārada viz.—“Men conversant with law lay down that disputes between one and many, with women, and with servants, are inadmissible as a suit” refers to suits having different causes of action.

By the expression ‘informs the king’ is also meant ‘that clad in a decent or simple dress, the plaintiff should inform the king’ when questioned by him. When the complaint is proper, (i. e. according to law), then the summoning of the defendant by sending a seal &c., and the non-summoning of those that are beyond the court’s jurisdiction, or exempt from it (as being afflicted with disease) being evident from the context, has not been expressly mentioned. This, moreover, has been clearly laid down in another Smṛti:<sup>2</sup> “At the (proper) time, he (i. e. the king or his proxy) should thus inquire of the applicant<sup>3</sup> standing and speaking before him: what is your suit for, and what is your grievance? Don’t fear, speak, O man! By whom, where, when and for what (have you been) troubled? Thus should he ask ones who has come to the court. Thus interrogated, what he speaks (as his grievance) he (i. e. the king) should consider along with the Councillors and the Brāhmaṇas; and if the complaint be proper or one according to law, (an order bearing) the seal, or a messenger, should be sent to summon him (defendant).

“The king should not cause to be summoned a person who is

Cases where summons may or may not issue.

afflicted with a disease, a minor, the old, one in difficulty and one engaged in (religious) duties; (nor) a person who would suffer great loss<sup>4</sup> if he were summoned, a person afflicted with pain (caused by the separation of relations); persons

engrossed in the king’s service, or in celebrating festivals; the

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1. The Bālambhaṭṭi and the Viśweswari give an alternative meaning thus: “nor should he accept a plaint presented unjustifiably by a party.”

2. Kātyāyana Verses 86-88.

3. Plaintiff:—Lit: one who pleads his cause in court. The reading given in the foot-note is adopted: another reading is ‘standing in a humble posture.’

4. Bālambhaṭṭi P. 9 L. 5 &c.

intoxicated ; persons possessed by evil spirits ; idiots or the insane : the aggrieved, or persons who are dependents ; (nor) a young and helpless woman, a high-born lady, a woman recently delivered, a maiden belonging to the highest tribe; (because) these females are declared to be dependent on their tribes. A summons is allowed against women upon whom their families are dependent, profigate women, and those who are prostitutes, as also against such as are of low birth or are degraded. Taking into consideration the time and the place, as also the importance or otherwise of the cause, the king may cause even the infirm &c. to be summoned and brought comfortably by means of conveyances. He may even summon, in weighty matters, hermits and the like, who have retired into the woods, after notice of the complaint taking care however that he thereby does not give any offence."

The law of arrests which is plain in itself, has been laid down by Nārada :—"A plaintiff should arrest a defendant who absconds when the cause is about to be tried, and one who disregards the plaintiff's

words, until the legal summons has been issued. Confinement to a place, arrest for a limited time, restrictions regarding travelling, and prohibition from a specific act ; this is the fourfold division of arrests. One subjected to an arrest must not transgress

it. If one arrested at a time proper for arrests transgresses his arrest, he should be punished. One who, in causing an arrest, acts improperly, shall also be liable to punishment. One arrested while crossing a river, or in a forest, or in a bad country, or during a great calamity, or while in similar predicaments, commits no fault by transgressing his arrest. One about to marry, one oppressed by a disease, one about to offer a sacrifice, one afflicted by a calamity, as also one (already) accused by another, and one engaged in the king's service ; (as also) cowherds engaged in tending cattle, cultivators in

1. Verses 97, 98.

2. 'At their leisure and by means of conveyances' *Bālambhatti*.

3. विद्युतेन—or it may also be rendered "having ascertained the importance of the complaint."

4. I. 47-54.

the act of sowing the crops, artisans while engaged in their own occupations, and warriors during warfare.

Arrest means a restraint by the king's orders. The weak and others (exempted) shall depute their son or some

\*PAGE 5. other relative; and these (relatives) will not become liable for speaking without authority for another, as will be seen from the text of Nārada<sup>1</sup>: "He, who is not either the brother, the father, or the son, nor is one acting under an order or authority of another, and speaks for him, deserves punishment; as does he who makes contradictory statements in judicial proceedings." (5).

### Viramitrodaya

The investigation of a Judicial Proceeding (*Vyavahāra*) being dependent on the knowledge of the subject of a judicial proceeding (*Vyavahāra-vishaya-jñāna*) the Author mentions generally the subject 15 of a *Vyavahāra*

### Yājñavalkya, Verse 5.

*Mārgena* 'by a way', i.e., means which is outside the *Smytis* and good usage; *parairddharṣitah*, 'by others injured', i.e., outraged; *rājne*, 'to the king', or the attack by another, *dvedayati*, 'informs', *tat*, 'that', then becomes *vyavahārasya padam*, 'the subject for a judicial proceeding', such as the Recovery of Debts and the like.

By the use of the word *chet* 'if', it has been indicated that the initiation of a dispute should not be started by himself. That has been stated by Manu<sup>2</sup>: "Neither the king nor any servant of his shall themselves cause any action (law suit) to be started, or haul up one that has been brought by another." The reading *yad*, 'which', is approved of Mis'ra and others. Which, e.g., the Recovery of Debts and the like he informs that should be utilised.

The plural in *paraiḥ*, 'by others', is where the matter at issue is 30 oes. Where, however, the points at issue are different, the text of Nārada<sup>3</sup> applies: "Of one with many, against women, or against agents, a dispute is admissible."

1. Ch. II. 23;

2. Ch. VIII. 43.

3. In the place of *chet* (छेत्) if.

4. Ch. II. 12. first quarter.

By the use of the word *Hi*, 'indeed' it is intended that what has been complained of, must necessarily be investigated. There, Brhaspati<sup>1</sup> mentions a special rule "The preceptor and the pupil, the father and the son, the husband and the wife, the master and servant, of these when brought together, a dispute is not permissible. Of men with many, with women, and with servants, a dispute is inadmissible, as has been declared by the learned. That which has been excluded by the king, as also that which is likely to be against the interests of the citizens, or of the nation in entirety, as also similarly of the subjects. Others also as 10 are antagonistic to (the interests of) the City, village, and the people in general, all such disputes have been declared as inadmissible."

That subject of a judicial proceeding, moreover, generally is of two kinds, from a plaint founded on suspicion, and a plaint founded on certainty. A plaint, moreover, is two-fold, in the form of an assertion 15 and in the form of a denial; as 'my gold has been taken away by him', and 'Having taken money as a loan from me, he does not give.' As says Kātyāyana<sup>2</sup>:—"What is just, he himself does not wish to do, or who does what is unjust". Manu particularly classifies the topics for a judicial proceeding thus: "Of these, (1) the first is the recovery of debts, 20 (2) deposit, (3) sale without ownership, (4) concerns of several partners together, (5) and resumption of gifts, (6) non-payment of wages, (7) breach of contract, (8) rescission of sale and purchase, (9) disputes between the owner (of cattle) and the cowherd, (10) the law of boundary disputes, (11) assault, (12) slander, (13) theft, (14) heinous offences, 25 (15) adultery or seduction, (16) duties of husband and wife, (17) partition, (18) gambling and betting; these are in this world the eighteen topics of Judicial Proceedings." (5).

## Ś'lapāṇi.

## Yājñavalkya, Verse 5

In a way outside the *Sāṃhitās* and good usage, one pursued by another, either monetarily or bodily, one complains when troubled, that is the point for the investigation by a Judicial Proceeding. That is of eighteen kinds, so says Manu<sup>1</sup>: "Of these (1) the first is the recovery of debts, (2) deposit, (3) sale without ownership, (4) concerns of several partners together, (5) and resumption of gifts, (6) Non-payment of wages, (7) breach of contract, (8) rescission of sale and purchase, (9) disputes between the owner (of cattle) and the cow-herd, (10) the law of boundary disputes, (11) assault, (12) slander, (13) theft, (14) heinous offences, (15) adultery or seduction, (16) duties of husband and wife; (17) partition;

1. See Nīrada II. 12, last quarter.

2. Verse 139.

(18) and gambling and betting; these are in this world, eighteen topics of a Judicial Proceeding.

By the expression if he 'informs', is meant that by himself a dispute should not be started. Brahaspati states a special rule, "The preceptor and the pupil, the father and the son, the master and servant, of these if brought in conflict together, a judicial trial cannot be admitted" (5).

When the defendant is brought by one of the (three) modes, viz., by the signet, the written order, or the messenger, what further should be done? So the Author replies

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### Yajñavalkya, Verse 6.

In the presence of the defendant should be reduced to writing whatever is alleged by the plaintiff, and marked with the year, the month, the fortnight, the day, the name, the caste, and the like.

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Mitâksharâ:—What is asked for is the artha, (the relief sought) the object to be accomplished; and a plaintiff (*Arihi*) is the one who sets it up. His opponent is *pratyarthî*, the defendant.

*Before, agrataḥ, tasya, (of) him, i.e., in the*

The Charac- presence of him, lekhyam, should be written, should teristics of a be reduced to writing. Yathâ, whatever, in which Plaintiff mode i.e., as alleged before at the time of making

the first complaint; and not otherwise; for in that case on the ground of departure (from the first complaint) the trial would be vitiated. For<sup>1</sup> "one who alters his former statement, one who shuns the judicial proceeding, one who does not put in an appearance, one who makes no reply, as also one who absconds after being summoned; these are the five varieties of a faulty (*Hina*) litigant."

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1. Nârada II. 33. Kâtyayana states the several amercements for these; thus: see verse 202.

अन्यवादी पणान् एष क्रियादेवी पणान्दश । नोवकाता दशदी ष षोडशैव निश्चरः ॥  
आहतपलदी च पणान् प्रदारतु मिश्चामिष् ।

By the use of the word *hi*, 'indeed' it is intended that what has been complained of, must necessarily be investigated. There, Brhaspati! mentions a special rule "The preceptor and the pupil, the father and the son, the husband and the wife, the master and servant, of these when brought together, a dispute is not permissible. Of one with many, with women, and with servants, a dispute is inadmissible, as has been declared by the learned. That which has been excluded by the king, as also that which is likely to be against the interests of the citizens, or of the nation in entirety, as also similarly of the subjects. Others also as 10 are antagonistic to (the interests of) the City, village, and the people in general, all such disputes have been declared as inadmissible."

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### S'ulapāpi.

### Yājñavalkya, Versa 5

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1. See Nirada II. 12, last quarter.

2. Verse 139.

3. Oh. VIII. 4-7.

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*Before, agratah, tasya, (of) him, i.e., in the presence of him, lekhyam, should be written, should*

The Characteristics of a Plaintiff. *be reduced to writing. Yathâ, whatever, in which mode i.e., as alleged before at the time of making the first complaint; and not otherwise; for in*

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The allegations of the plaintiff having been once reduced to writing at the time of the first complaint, it

P. 5. L. 9. might be said that writing it over again would be meaningless, so the Author says: Samā-

5 māsetyādi, year, month &c.—marked with the year, month, fortnight, date, day &c., as also bearing the names of the plaintiff and the defendant, and their castes such as Brāhmaṇa &c. By the word Ādi, &c., are also included the amount, the quantity, place, time, reason for forbearance<sup>1</sup> and the like (*Adīni*). As has been said<sup>2</sup>:

10 "That is termed a plaint or complaint, which is presented or made to the king, and which contains (the *Ariha*)

P. 5. L. 12. the cause of action, which is in accordance with the law, which is complete and devoid of

15 confusion, which contains the point at issue, which is couched in significant language, and which is consistent with the claim made out; (which is) intelligible, not inconsistent, certain, capable of proof, concise yet bringing out the whole cause of action, not impossible in regard to place or time; which contains the year, the season, the month, the fortnight, the day, the time, the country and the particular

20 district, the village, the house or dwelling place, the point at issue, the designation, the caste, the personal description and age; which contains the measure and quantity of the object to be secured, the names of the plaintiff himself and of the defendant, and (which is), marked with the names of the ancestors of himself and of the defendant

25 respectively, as also with the names of kings; (which contains) the cause<sup>3</sup> of forbearance and the injury done to self (the plaintiff); in which are mentioned (the names of) the grantee and the grantor."

*Bhāṣṭā* is the same as *Pratijñā* or *Pakṣa*. It has no other meaning.

The point to be noted is that at the time of the first complaint, only the cause of action is written, while in the presence of the defendant, the year, the month, and other particulars are written.

Although the specification of the year is not necessary in all proceedings, still it is essential in trials concerning

P. 5. L. 19. deposits or pledges, gifts, and sales, on account of the text:<sup>4</sup> "In the case of pledges, gifts, or

1. ग्रन्ती—Reason for forbearance—i. e. where the suit is apparently brought after the proper time, plaintiff has to explain the delay.

2. Bālambhaṇḍī refers to this as the text of Nārada, but it is not found there.

3. Yajn. II. 23.

sales, prior transactions have preponderance". And also in money disputes, such as in a case where a certain definite amount was borrowed by a certain person and was repaid in the same year, and again in another year the same amount was borrowed by the same person, but on demand he sets up repayment, the utility of the prescribed rule would be that payment and repayment in another year would be proved. The same (rule) would apply in the case of months. The provisions regarding (the specification of) country, place &c. however, apply only in transactions concerning immovables, on account of the (following) text: "In suits for immovable property, these ten (particulars) should be entered in the plaint viz. the province, the village or town, so also the particular site, the caste and names (of plaintiff and defendant), the names of neighbours, the measurement and (descriptive) name of the field, the names of the father, the grandfather &c. as also a description of former kings." *Country*, e. g. Central Province &c.; *Place* or village such as Vṛāṇasi &c.; *Particular site* i.e. house, field &c. of the same village (town) properly identified and marked out by the specification of boundaries on the East, West, &c. *Caste*—i. e. of plaintiff and defendant such as Brāhmaṇa &c. *Name*—i. e. Dēvadatta &c. *Neighbours* i. e. people residing on the adjoining land. *Measurement* i. e. of land such as a *nivartana*<sup>1</sup>, *Name of the field*—such as—a rice-field, or a rotation-crop field; black-field, white-field &c. And also names of the father and grandfather of the plaintiff and the defendant; and also a *specification of names* of the three previous kings. The object intended is that the year, month &c., in each transaction should be written as much only as is necessary for that transaction.

Such being the characteristics of a plaint, those (plaints) which are wanting in these essentials, but present

\* Page 6. an illusory appearance of a plaint, are evidently vicious plaints, and so vicious plaints, have not been separately mentioned by the Lord of Yogis<sup>2</sup> (*Yogis'vara*).

Others<sup>3</sup> have mentioned for the sake of (greater) clearness: "The king should discard a vicious plaint, which, is impossible, does

1. of Kātyāyana. 127, 128.

2. i. e. 20 rods.

3. i. e. the sage Yājñavalkya.

4. see Bhūspati III. 6, 9, 10; and Kātyāyana 160.

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not disclose any injury (to plaintiff), is meaningless or causeless, cannot be proved, and which is contradictory." *Impossible*, as e.g. "the defendant having taken my hare's horo, does not return it," *Containing or disclosing no injury*, as e.g. "the defendant moves about in his house in the light of the lamp of my house". *Meaningless*, i. e. devoid of a definite meaning e. g. ka, cha, ta, ta, pa, ja, da, da, ba, &c. *Causeless*, as e.g. this Devadatta reads in a charming voice near my house &c. *Incapable of proof*, as e.g. "I was ridiculed by Devadatta with the knitting of his brows"; this is incapable of proof on account of the impossibility of the means (to prove it). Having a transitory character, (there is) no possibility of (obtaining) a witness much less a writing; nor, being trifling, would it (the fact) be amenable to an ordeal. *Contradictory*, as e.g. "I was abused by a dumb man" &c. Or such as are opposed to the (usage 15 of the) town, nation &c.

These are refutable by their very nature, and therefore are not specified. Even here "the impossible &c."

L. 8. are selected as illustrations for the sake of explanation,<sup>1</sup> that too does not put away a

plaint which is a combination of several counts. "All the following plaints are declared as inadmissible, viz. that which is prohibited by the king, which is hostile to the (interests of) citizens, or to the whole nation, or to the ministers; as also others which are hostile to the usages of the city, town or eminent citizens"

25 It has been said above that "a complaint which joins together several causes of action is not allowed"; but L. 13. there would be no fault in such a case, if it is expressly described as a plaint 'mixed up of many objects', it being unobjectionable to allege that "my gold, clothes, or silver has been taken away by this man."

1. व्याप्तिः—Means a clearer explanation by drawing attention to the component parts of the sentence or words, as opposed to a rough, or general, or popular conception. It is the same as करतः ज्ञानि sometimes used elsewhere.

The meaning is that we know, without this text, that plaints which are अप्रसिद्ध are पक्षाभासाः and must be rejected; still the text is used to make the gist of the meaning of the word व्याप्ति clear. By व्याप्तिः here is meant the व्याप्ति of the word पक्ष. तदेव, still these several texts (denoting पक्षाभासाः) do not include the case of अनेकपक्षसंकरिणः. For it is not a case of पक्षाभास at all, as the only defect of that plea is that it cannot be gone into simultaneously.

If it be said that a plaint becomes vicious on account of mixing together several counts in suits for 'the recovery of debts' &c., that too will not hold. For, the plaint is allowable which contains averments like the following, viz. 'He borrowed my rupees at interest', 'I delivered gold into his hand' and 'he deprives me of my field.' Only (in such cases) on account of a difference in the causes of action the trials are held separately in succession and not all together. As says Kātyāyana<sup>1</sup>: "A king, desirous of arriving at the truth, may undoubtedly admit even that plaint which contains several counts, but which is in conformity with the principles of law." Therefore the meaning of the rule is, that a plaint containing several counts will not be allowed to be established in all the counts at one and the same time.

The word (*Arthi*) plaintiff, includes his son, grandson &c., as they have a common interest. One specially appointed as an agent, is also presumed to have an identity of interest on account of the appointment, according to the text<sup>2</sup>—"If one is deputed by the plaintiff or is chosen by the defendant as his representative, his success or defeat is regarded as that of the party for whom he (the representative) pleads." The success or defeat of the agent or representative is of the original principal only.

This, moreover, should be jotted down upon the ground or on a board with white chalk, and after it has been L. 21. revised and corrected by rubbing off and rewriting, it should be written down upon a paper, according to the following text of Kātyāyana<sup>3</sup> viz. "The *Prādinikā* or the Chief Judge should get down the plaintiff's statement, as made by him in his own way, on a board in white chalk, and then on a paper, after it has been revised." The revision and correction should be made only while yet the answer (of the defendant) has not been filed, and not thereafter, as otherwise there is the fear of the proceeding never ending.

1. Verse 137.

2. Of Nārada I. 22.

3. Verse 131.

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The word (*Arthi*) plaintiff, includes his son, grandson &c., as they have a common interest. One specially appointed as an agent, is also presumed to have an identity of interest on account of the appointment, according to the text—"If one is deputed by the plaintiff or is chosen by the defendant as his representative, his success or defeat is regarded as that of the party for whom he (the representative) pleads." The success or defeat of the agent or representative is of the original principal only. 15  
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This, moreover, should be jotted down upon the ground or on a board with white chalk, and after it has been L. 21. revised and corrected by rubbing off and rewriting, it should be written down upon a paper, according to the following text of Kâtyâyana<sup>2</sup> viz. "The *Prâdvîrûpa* or the Chief Judge should get down the plaintiff's statement, as made by him in his own way, on a board in white chalk, and then on a paper, after it has been revised." The revision and correction should be made only while yet the answer (of the defendant) has not been filed, and not thereafter, as otherwise there is the fear of the proceeding never ending. 25  
30

1. Verse 137.

2. Of Nârada I. 22.

3. Verse 131.

not disclose any injury (to plaintiff), is meaningless or causeless, cannot be proved, and which is contradictory." *Impossible*, as e.g. 'the defendant having taken my hare's horn, does not return it,' *Containing or disclosing no injury*, as e.g. 'the defendant moves about in his house in the light of the lamp of my house'. *Meaningless*, i. e. devoid of a definite meaning e. g. ka, cha, ta, ta, pa, ja, da, ha, &c. *Causeless*, as e.g. this Devadatta reads in a charming voice near my house &c. *Incapable of proof*, as e.g. "I was ridiculed by Devadatta with the knitting of his brows"; this is incapable of proof on account of the impossibility of the means (to prove it). Having a transitory character, (there is) no possibility of (obtaining) a witness much less a writing; nor, being trifling, would it (the fact) be amenable to an ordeal. *Contradictory*, as e.g. "I was abused by a dumb man" &c. Or such as are opposed to the (usage 15 of the) town, nation &c.

These are refutable by their very nature, and therefore are not specified. Even here "the impossible &c."

L. 8. are selected as illustrations for the sake of explanation,<sup>1</sup> that too does not put away a

plaint which is a combination of several counts. "All the following plaints are declared as inadmissible, viz. that which is prohibited by the king, which is hostile to the (interests of) citizens, or to the whole nation, or to the ministers; as also others which are hostile to the usages of the city, town or eminent citizens"

L. 13. It has been said above that "a complaint which joins together several causes of action is not allowed"; but there would be no fault in such a case, if it is expressly described as a plaint 'mixed up of many objects', it being unobjectionable to allege that "my gold, clothes, or silver has been taken away by this man."

1. शृणुते:—Means a clearer explanation by drawing attention to the component parts of the sentence or words, as opposed to a rough, or general, or popular conception. It is the same as नवातः हानि sometimes used elsewhere.

The meaning is that we know, without this text, that plaints which are अप्रसिद्ध are प्राप्यामास and must be rejected; still the text is used to make the gist of the meaning of the word विषय clear. By शृणुते here is meant the व्याख्या of the word विषय, नवातः, still these several texts (denoting प्राप्यामास) do not include the case of अनेकप्रसंकिणी. For it is not a case of प्राप्यामास at all, as the only defect of that plea is that it cannot be gone into simultaneously.

If it be said that a plaint becomes vicious on account of mixing together several counts in suits for 'the recovery of debts' &c., that too will not hold. For, the plaint is allowable which contains averments like the following, viz. 'He borrowed my rupees at interest', 'I delivered gold into his hand' and 'he deprives me of my field.' Only (in such cases) on account of a difference in the causes of action the trials are held separately in succession and not all together. As says Kātyāyana<sup>1</sup>: "A king, desirous of arriving at the truth, may undoubtedly admit even that plaint which contains several counts, but which is in conformity with the principles of law." Therefore the meaning of the rule is, that a plaint containing several counts will not be allowed to be established in all the counts at one and the same time.

The word (*Arihi*) plaintiff, includes his son, grandson &c., as they have a common interest. One specially appointed as an agent, is also presumed to have an identity of interest on account of the appointment, according to the text<sup>2</sup>—"If one is deputed by the plaintiff or is chosen by the defendant as his representative, his success or defeat is regarded as that of the party for whom he (the representative) pleads." The success or defeat of the agent or representative is of the original principal only.

This, moreover, should be jotted down upon the ground or on a board with white chalk, and after it has been

L. 21. revised and corrected by rereading and rewriting, it should be written down upon a paper, according

to the following text of Kātyāyana<sup>3</sup> viz. "The *Prādīpikā* or the Chief Judge should get down the plaintiff's statement, as made by him in his own way, on a board in white chalk, and then on a paper, after it has been revised." The revision and correction should be made only while yet the answer (of the defendant) has not been filed, and not thereafter, as otherwise there is the fear of the proceeding never ending.

1. Verse 137.
2. Of Nārada I. 22.
3. Verse 131.

Hence Nârada<sup>1</sup> has said: "He (i.e. the Judge) may make corrections in the complainant's first complaint so long as the answer is not received; being stopped by the answer, the correction should cease." If the Councillors cause an answer to be filed without revising the plaintiff's first complaint, then the Councillors should be punished according to the punishment laid down in the text<sup>2</sup> (*Râgâllobhâdt &c.*) "out of passion, avarice &c.", and the trial should be re-commenced by the king, commencing with the solemn affirmation.

### Viramitrodaya.

10 Such a Judicial Proceeding has four feet (or parts), so as the Author will state hereafter, there, first in the part regarding the Plaintiff, the Author states the function of the king<sup>3</sup>

#### Yâjñavalkya, Verses 6.

15 Arthind, 'by the Plaintiff', Pratyarthino-agrato, 'in the presence of the Defendant' should be caused to be written. Samd, 'the year'; mâsah, 'month' is well-known; tadardham, 'half of that', i.e., the fortnight; ahah, 'the day', these are the periods for a plaint, i.e., these periods of time are for the part dealing with the Plaintiff. Ndmajati, 'name and caste', i.e., of the Defendant, as also of himself.

20 By the use of the term A'di, 'and the like', are included, the quantity of the amount and the like stated by Kâtyâyanî thus: "The amount of the claim, the material and the quantity; similarly the name of oneself and also of the kings in successive order, of the place of residence, also the name of the object in dispute, and in genealogical order the names of ancestors, the (nature of the) injury, the grantor and the grantees, and also other causes for forbearance—these should be stated in the plaint, and (the plaint) constituted.

By this—"In such and such a year, such and such a month, of myself by name such and such, the grandson of such and such, the son of such and such, and of a particular caste, by such and such a one, the

1. Not found in Nârada; but see Dharmapati III. 15.

2. Yâj. II. 4. p. 643 above.

3. i.e., either the king himself when personally attending to the investigation or the Judges appointed by him.

4. Verses 125, 126.

grandson of such and such, the son of such and such and by name such and such, within the territory of such and such a king, so much quantity of gold was taken as a loan, for the repayment of that, a demand was not made by me upto such and such a time out of regard for his friendship; or was demanded in the last year, &c., thus, containing these and like recitals came to be the body of the written complaint to the king. But there, 'you owe me a hundred of guld, you having obtained from me as much amount as a luan', is the body of the Plaintiff, 'You should give', is the expression of the relief, while the rest is useful for a decision. Thus, where as much portion of the complaint becomes established, so much should be stated by the Plaintiff in the plaint, and he caused to be written by the king, otherwise it should be noted that there may be the fault of an undisclosed proof. The magnitude of the amount as also an excessive cause of trouble may also be included in addition. In regard to that also, justice which is asked for, must be included in the first information.

'By the plaintiff'—this is where it is possible. When, however, he is not available, says Nārada<sup>1</sup>: "If one he deputed by the claimant, or chosen as his representative by the defendant, he for whom he speaks, of those shall be the victory or defeat. (22). He, who is not either the brother, the father, or the son, nor is one acting under an order or authority of another, and speaks for him, deserves punishment; as does he who makes contradictory statements in judicial proceedings." (23).

Bṛhaspati<sup>2</sup>: "For persons of immature intellect, for the dull, the intoxicated, the old, the women and for persons suffering from a disease, one may depose for a plaintiff or an answer, even though the man may not have been appointed."

In some cases, however, Kātyāyana<sup>3</sup> prohibits an agent thus: "In accusations for Brāhmaicide, drunkenness, theft, sexual intercourse with the preceptor's wife, a representation is not allowed, and even in similar other accusations such as, for homicide, theft, crim. coa. with others' wives, eating the uneatable, as also abduction and despoiling of a maiden; for abuse, false measures, similarly for hatred against the king, a representative must not be permitted to be given; the Actor must plead in person."

The duties preceding the plaint, either of the king, or of the Complainant, being too well known in other Smṛti's have not been stated

1. Intr., Ch. II. 22-23.

2. Ch II. 34.

3. Verses 93, 94, 95.

by the Author of this work. e.g., says Kātyāyana<sup>1</sup>, "When a party is in possession of a thing seized by him, a trial should not be started by the king; it should either be restored to him, or it should be deposited with a third party." And Nārada<sup>2</sup>: "One who absconds when the cause is to proceed, who disregards the plaintiff's words, such a defendant the plaintiff may arrest, pending the summons being served (47). If one arrested at a time proper for arrests, transgresses his arrest, he should be punished. One who, in causing an arrest, acts improperly shall be liable to punishment" (51). Also, "One arrested while crossing a river, or in a forest, or in a bad country, or during a great calamity, or while in similar predicaments, commits no fault by transgressing his arrest." (49). So, "One about to marry, one oppressed by a disease, one about to perform a sacrifice, one afflicted by a calamity, as also one who is accused under the law, as also one engaged in sowing operations (52). Cowherds engaged in tending cattle, cultivators in the act of gathering the crops, artisans also during the period while engaged in their occupations, and warriors during warfare (53). One who has not yet arrived at years of discretion; a messenger, one about to give alms, one engaged in a vow; those in difficulties also, must not be arrested, nor should the king summon them" (54).

Here, the excellence of the Plaintiff is 'brief in words, but rich in meaning' as stated by Bhṛhaspati<sup>3</sup> and others.

Of the faults, such as stated in the text<sup>4</sup>: "Impossible, faulty, meaningless, baseless" and the like, and their absence has been indicated by the prefix *na* in the expression *ā-veditam*, 'alleged'; these, moreover, through fear of swelling the treatise are not being expanded here.

Plaintiff, however, must not depose contrary to his first information, as says Bhṛaspati: "That matter, moreover, which one alleges, one must not change in form; nor should he resort to another alternative; if he resorts, he is (deemed to be) defeated in regard to the first." Before, however, the investigation commences, there is no loss to the plaintiff depositing more or less. That says Nārada<sup>5</sup>: "Before the answer to the plaint has been tendered by the defendant, the plaintiff may amend his own statements so long as there is no sight of the

1. Verse 120.

2. II. 47, 49-54.

3. See Ch. III. 6.

4. Of Kātyāyana Verse 140.

5. Ch. II. 7.

The (answer by) confession and avoidance, *Pratyavaskandanam*,  
is, e.g. thus: "true it is that I received, but I returned  
P. 7. L. II. it, or obtained it as a gift." As says Nārada,  
"If a defendant, admitting plaintiff's written

5 allegations, sets up a plea, that is called a confession and avoidance."  
The (answer by a) former judgment, *Prāṇyāyam*, or *Res Judicata*  
would be where the defendant would speak thus, 'I was sued by him  
on this cause of action, and in that suit he was defeated in a trial at  
law'. It has also been said by Kātyāyana<sup>2</sup>: "If a person, though  
10 defeated by the customary procedure, again files a written complaint  
the answer to him would be, 'you were defeated formerly'; this  
is called the plea of former judgment."

The characteristics of a proper answer having thus been  
established, the viciousness of those answers which

15 P. 7. L. 17. are without the characteristics of a proper answer,  
but which bear the resemblance of an answer, is  
self-evident. This has also been made clear in another Smṛiti<sup>1</sup>  
"That answer which is dubious, departs from the point at issue, is  
either too short or too long as compared with the point at issue,  
20 covering only a portion of the claim, and is of the like sort, cannot be  
called a proper answer. An answer which is irrelevant, incomplete,  
of concealed import, and is inconsistent, as also that which can be  
understood by an explanation (only), and which is unreasonable, is  
not an answer which will establish the plea set up". Of these:  
25 *Sandigdham*, 'a dubious answer' is e. g. where it is alleged that  
defendant borrowed 100 gold coins, the defendant answers 'yes,  
I did borrow (something) but (I am) not certain whether  
100 gold coins or 100 *Māṣas*'. *Prakrtādayat*, 'Departs from the  
point at issue,' as where in a suit for 100 gold coins, the defendant  
30 answers 'I owe 100 *pāṇas*'. *Atyalpam*, 'Too small,' as where in a  
a suit for 100 gold coins, the answer is 'I owe five.' *Atibhūti*, 'Too  
large,' as where in a suit for 100 gold coins, the defendant answers

1. Cf. Kātyāyana 170.

2. Verse 171.

3. Cf. Kātyāyana 174, 175.

4. A gold measure,  $\frac{1}{5}$ th part of a *pāṇa*. "माणे विशेषितमो भागः पाणः पाणस  
विशेषितः".

'I owe two hundred'. *Pakshaikades'avyāpi*, Covering only a part of the claim; as where in a suit for (recovering) gold, clothes, &c., the defendant answers—'only gold was recovered, nothing else'. *Vyastapadam*, Irrelevant, as in a suit for recovery of debts, defendant answers with reference to an entirely different matter, as, e.g., in a suit for recovering 100 gold coins, defendant answers—'I have been beaten by him'. *Avyāpi*, Incomplete, i.e., not covering the particulars of the country, place, &c., ns, e.g., where it is alleged. 'He has deprived me of my field to the east of Wārāngasi in the Central Provinces, defendant answers.' "Yes, I have deprived him of a field." *Nigūḍhārtham*, Of concealed import, e.g., in a suit for 100 gold coins, defendant retorts thus 'what! Is it I alone who owe anything to him?' Here by this dubious statement, it is implied that either the Chief Judge, or a Councillor, or the plaintiff is in the position of a debtor to some one else and thus the statement has a concealed import. *Ākālam*, Inconsistent, i.e., Contradictory having regard to the statements made before and after; as in a suit instituted for 100 gold coins, defendant answers, 'yea I did receive the amount, but I do not owe it.' *Vyākhyāgamyam*, Requiring explanation, i.e., intelligible by the help of explanations required<sup>1</sup> by reason of the implication or express use of cases and compounds (which are) difficult to split up, or by reason of the use of expressions current in the language of foreign countries. As for example, in a suit for 100 gold coins due under a paternal debt the defendant answers: 'As for the expression *grihita-sata* (a hundred

1. This has been given as an instance of the 'Implication or express use of cases and compounds (which are) difficult to split up' (ज्ञातेष्वकृतसप्तसाधारणिभान्). Here, the answer of the defendant is capable of a two-fold interpretation—

(1) From the Defendant's side it may be said, 'even supposing the expression *grihita-satasya pitubh* means that my father had received a hundred coins, I do not see its connection with gold.'

(2) The plaintiff on the other hand, or even, the court might read in the defendant's answer, 'an admission of the receipt of 100 gold coins by the father.'

And lastly, the fact that the answer is capable of an interpretation either way as stated above is in itself an evidence of (a ज्ञातेष्वकृत) 'a compound difficult to be split up'; another reading is अव्याप्त=irrelevant, faulty.

having been accepted), I do not know its connection with gold coins and my father.' Here, the real meaning (of the defendant's answer) is this: "As for (the expression *grihita-satasya pituḥ*) my father having accepted a hundred coins, I am not aware of his having received gold coins" *Aśram*,<sup>1</sup> *Unreasonable*, i.e., opposed to reason. As in a suit alleging 'he borrowed 100 gold coins at interest, but did not the principal,' the answer is 'True, I have paid the interest, but not receive the principal.'

By the use of the word 'answer' in the singular number, a combination of answers is excluded. As says

\* Page 8. *Kātyāyana*<sup>2</sup>—"That which admits part of the

claim as true, sets up a special plea<sup>3</sup> to another part, and makes a denial of a third, is regarded as no answer on account of the mixture (of several pleas)." The same Author<sup>4</sup> thus explains the reason why such (a statement) is regarded as no answer: "In one suit, the burden of proof cannot lie on two litigants, nor can both obtain judgment, nor can two proofs be adduced simultaneously in one suit." In a combination of the answer by denial and by special exception it is incumbent both on the plaintiff and the defendant to adduce evidence, as has been said: "In the case of a denial,<sup>5</sup> the proof rests on the plaintiff, while in a special plea, on the defendant." The simultaneous proof by both in one transaction is contradictory. As for instance where the allegation is, "he has taken gold and 100 rupees", and the answer is "gold was not taken, 100 rupees were taken, but were returned." In a combination of the pleas of special exception and former judgment, the defendant alone has to adduce evidence. "In the combined plea of former judgment and special exception, the defendant must exhibit proof." As where the charge is that gold was borrowed and it is met by an answer that it was returned, and also that the plaintiff was defeated by a judicial trial with regard to silver. Here the former judgment should be proved either by (producing) the decree itself, or by the evidence of

1. *Kātyāyana* illustrates thus:

पाकाद्य ददता नो सन्ति सन्तीस्यालि वदुगामः । अतिभिति गतेन सम्पर्क नोक्तव्येष्टः ।

2. Verse 189.

3. Correspond to the pleading, in English law of "Confession and avoidance."

4. Verse 190.

5. मिरया—मिरया अन्धविद्वा बिलम्बहात् ॥ P. L. 19.

those who gave (or were present at) the former judgment, while a plea of special exception should be proved by witnesses, documents, &c. Thus there is an opposition between the pleas of *res judicata* and special exception.

The same would be the view in the case of a combination of three pleas in an answer. As, e.g., where it is alleged 'he (the defendant) borrowed a hundred gold coins, a hundred rupees, and also clothes, the defendant answers "True, gold was borrowed, but it was returned; the hundred rupees were not taken at all; and as regards clothes, he has already been defeated in a former judgment." So also in the case of a combination of four pleas.

These mixed pleas constitute vicious answers when set up simultaneously, each particular plea not being

P. 8, L. 12. likely to be established without its particular proof; but when taken separately they are good answers. The order is to be determined according to the will of the plaintiff, the defendant, and the councillors.

When, however, there is a combination of two, that plea, which contains the most important point should be taken up for proof first, and the suit should proceed; the minor plea should be taken up afterwards and the trial determined. Where there is a combination of (the plea of) admission and another plea in answer, the suit should be tried by taking up the other plea (for proof); for a plea of admission there being no (necessity of) proof<sup>1</sup>.

As Hārita after observing: 'If a denial and a special exception should occur together, and if the plea of admission be made with any other, which of these should be accepted as an answer?' has remarked: "In such a case, that which contains the most important point or which is conducive of proof, is to be considered as an unmixed answer; any other answer becomes otherwise;" i.e. it becomes a mixed answer.

The meaning is that the order in which such mixed pleas are taken up for determination depends on choice by regard to the plea

1. It being impossible to adduce evidence for both the pleas simultaneously.

that survives last. Of these, the plea containing the *important point* occurs, as e.g. where in a suit it is alleged that "the defendant borrowed gold, one hundred rupees, and also clothes" and the answer is, "True the gold was taken, but one hundred rupees were not taken, and as for the clothes, they were taken, but were returned." Here the answer by denial being the important plea, the trial should proceed after taking plaintiff's evidence. Then the trial should proceed with reference to the clothes. The same order should be followed in the combinations of denial and previous judgment, or of special plea and previous judgment. Moreover, in the same suit, where the answer is ". True, I received the gold and the hundred rupees, (but) I will repay (them); the clothes however, were not received, or having been received, were given back; or that he (the defendant) was defeated formerly in regard to the clothes"; in such a case although the admission is the most important point, there being no necessity of evidence for it, the trial should proceed after taking evidence on the plea of denial &c. Where, however, the denial and special plea cover the whole point, as e.g. where the plaintiff identifying his cow by the horns, says "This is my cow, (it) was lost at a particular time, and was seen today in this man's house"; while the defendant says: "This is false, the cow has been in my house even before the time mentioned by him (plaintiff), or it was born in my house." It cannot be said that this is not an answer, as it is competent to meet the point in dispute, nor can it be a simple denial, as a special plea has been introduced. Nor, there being no admission of a portion of the plaintiff's case, is it a special plea. Therefore this is an answer by denial coupled with a special exception. Here defendant has to adduce evidence, on account of the text<sup>1</sup> "the burden is on the defendant, in (the case of) a special exception."

It may be asked, under the text<sup>2</sup>: "In a denial, the evidence should be led by the plaintiff" why does not the burden (in the above case) lie upon the plaintiff?

P. S. L. 31. The answer is that the text applies to a pure denial.

Then it is asked why should not the text<sup>1</sup> "In a special exception, the burden is on the defendant" be made likewise applicable only to a simple plea of special exception"? the

1. कारणे प्रतिवादिति ।

2. निष्पक्षा दृष्टिरूपम् ।

answer is, "no, this cannot be; every plea of special exception necessarily involves a denial; and therefore a special exception pure and simple can never occur."

As the wellknown plea of special exception contains an admission of a portion of the plaintiff's case, there

\* P. 9. is a denial of the rest. As e.g. "True, I did receive a hundred rupees, but I do not owe (the amount) now, as I have repaid it." In this example the particular point to be noted is, that there is no admission of a portion of the plaintiff's case. This moreover has been clearly laid down by Hārīta :—"Of the two answers viz. of denial and special exception, the special exception should be accepted (as an answer)."

Where the pleas of denial and previous judgment cover the (whole) point at issue—as e.g. in the allegation, "He owes a hundred rupees to me" the answer is: "This is false; he (the plaintiff) has been defeated formerly on this point"; there also the burden of proof is on the defendant, on account of the text<sup>1</sup>, "When *res judicata* and special exception are set up as a combined plea the defendant should exhibit proof." Because, the plea of a former judgment pure and simple can never occur, and (therefore) it might be said that the plea is no answer, likewise, the plea of admission is a good answer (precisely) because, it meets the point at issue by admitting as established the claim which in the plaint was stated as the matter to be established.

Where, however, there is a combination of a special plea and previous judgment, as e.g. when charged with having received a hundred, the defendant answers, "True, it was received, but it was returned, and, moreover, he (the plaintiff) has been defeated before on this very cause of action", in such a case, proof will be exhibited (in the order determined) according to the defendant's choice. Then the result is, that a double proof in one suit by the plaintiff and the defendant should not be allowed.

#### Viramitrodaya.

When the nature of the complaint has thus been reduced to writing by the king, the Author proceeds to state the function of the

Authority should grant time to the Defendant. Also what the Author will state hereafter, that is stated to be the additional time. (147)

Vyāsa<sup>1</sup> : "If at that time there occur no fault indicated by the acts of the king or divine agency, by merely giving up time, he does not become defeated. If the fault be due to acts of the king or of God, he should establish (his case) by means of witnesses; but if he resorts to begging,<sup>2</sup> he should be punished and should be compelled to pay the amount."

The plaintiff, however, does not get time for the formulation of the plaint. So says Kātyāyana<sup>3</sup>: "Since the commencement of the litigation was resolved upon by him after a long deliberation, therefore he must not get time; one who is proceeded against, should, however get time."<sup>4</sup>

To this Bhāspati mentions an exception:—"If the plaintiff owing to immaturity, is not able to declare, then time should be given by regard to the transaction and the capacity". When, however, the defendant without the existence of causes prescribed by the S'astras, does not adduce an answer, then he is (deemed to be) defeated, vide the text<sup>5</sup>: "One who alters his former statement, one who abus[es] the judicial proceeding, one who does not put it in an appearance, one who makes no reply, and one who after he is summoned runs away; these are stated to be the five varieties of a faulty (*kīna*) claimant"; as also under the text<sup>6</sup>: "In the plaint when stated, if one does not give a proper answer, after the lapse of seven nights he becomes defeated, and deserves penalty."<sup>7</sup>

That answer, moreover, is of four kinds as says Kātyāyana<sup>8</sup>: "Pleading the truth, or the falsehood (of the plaint), setting up a special plea, or a decision in a former judicial proceeding; thus, the answer is four-fold". Vyāsa<sup>9</sup>: "Admitting the truth of the point at issue, is known as *Admission*; giving a reason, (is known) as a *special plea*; and declaring it as false (is known) as *denial*". Bhāspati<sup>10</sup>: "If a

1. These texts are also attributed to Kātyāyana. See verses 161, 162. There the reading is different, as will be found by a comparison of the two.

2. वृक्षं—The other reading वृक्षं 'through crookedness' is better.

3. Verse 134.

4. Cf. Kātyāyana Verse 202.

5. Cf. Bhāspati IV, 4.

6. Verse 165.

7. Cf. Kātyāyana Verse 166.

8. Cf. Kātyāyana Verse 171.

person, though defeated by the customary procedure, again files a written complaint, the answer to him would be 'you were defeated formerly'; this is called the plea of 'former judgment'.

Here, the first, being in the form of an admission of an established fact which becomes the means of proof, is a good answer. It is not that thus the defendant is restricted<sup>1</sup> because in this investigation about a fact, it is inadmissible as a restrictive factor.

The answer by denial is, moreover, four-fold; so says Vyāsa<sup>2</sup>: " 'This is false'; 'I do not know', 'I was not present at the time,' and 'I was not born at the time'; thus the answer by denial is of four varieties."

Here by saying 'this is false', 'I do not know', and by making similar defences, there is a denial or concealment of the fact itself; by the answer 'I do not know', by pleading the non-remembering of the essential fact, it is intended to maintain its absolute non-existence; to the allegation in the plaint 'you took this loan in Vārāṇasi,' the answer being, 'I was not in Vārāṇasi'; to the allegation, 'you obtained twenty-five years ago,' the answer being 'Indeed, I was not born at the time', thus by a series of allegations and refutations indicating the meaning; in an allegation, 'by your father was a hundred of gold taken', the answer that 'I do not know', is an assertion and a refutation, and not an answer 'by denial.'

It should not, however, be supposed that thus there being an absence of an answer (as such), there should be a success for the plaintiff, as all circumventions are necessarily to be disposed of by a judicial trial according to law, and others these are admissible as means of proof by the deponent. Hence it is that in the case of an overt sale (the plea of) non-delivery as a gift by the owner<sup>3</sup> has also to be weighed. Here, therefore, the non-proof of the fact in issue is the fault in the plaint.

The answer by 'a special plea' is, moreover, three-fold by regard to the cause of action alleged in the plaint, it may be 'more strong', 'equal in strength' or 'less strong'.

There, the first is as, e.g., in the allegation, 'You obtained a hundred from me' the answer is 'yes, but it was paid off.' Here the central point of the absence of proof of non-payment not being pressed,

1. i.e. prevented from proceeding further on.

2. Also Kātyāyana, Verse 169.

3. i.e. the time of the alleged transaction.

4. विष्व—The owner of the thing which was supposed to be lost.

non-proof is the fault in the plaint. This is also called a counter-plea, *Pratyavasakandana*, vide this text of Brhaspati: "If a defendant, while admitting plaintiff's written allegations sets up a plea, that is called a confession and avoidance".

The second,<sup>2</sup> as is a plaint that 'this land is mine as it has come to me in successive generations' the same is the answer. This, moreover, is in reference to a valid plea in defence. 5

The third as in a plaint that 'this land is mine, as commencing from such a period it has been mortgaged with me by the owner,' the answer is 'commencing from five years ago, that has been mortgaged with me by him in the fifth year'; this also is in reference to a valid plea. From the text<sup>3</sup> "In transactions of mortgage, gifts, and sales, the prior is more powerful". Here also, for dispelling fraud, proof, &c., has to be adduced. 10

The answer of a 'former decision' is, however, in this form, viz., 15  
"In regard to this cause of action, he has been conquered by me", and the like.

Here Kātyāyana<sup>4</sup>:—"That which admits part of the claim as true, sets up a special plea to another part, and makes a denial of a third, is regarded as no answer on account of the mixture (of pleas)". 20 There, some explain the meaning of the text thus: In a claim for a hundred taken, 'I owe fifty certainly, twentyfive has been paid off, and twenty-five was not taken', and the like is no (proper) answer, and hence also "In one suit, the burden of proof cannot lie on both litigants, nor can both obtain judgment, nor can two proofs be adduced simultaneously in one suit" this text<sup>5</sup> becomes consistent. 25

Some say that the aforesaid mixed answer is admissible, and that therefore all that holds good. That is not proper. Not that each a subject matter itself is not possible, as it is generally seen; nor that each an answer must not be given, it being impossible to prevent the tendering of an answer based as on facts; nor is it that in such an answer defeat alone will follow. In a dispute the answer which challenges an

1. Vijñāneśwara assigns this text to Nārada. See text p. 7. l. 12 Tr. p. 661. It is not found in the 'Extracts from Brhaspati' published by Dr. Jolly, S.B.E., Vol. XXXII.

2. i.e. the द्वयवाच the second variety of a कारणोदाता.

3. Yājñavalkya II. 25.

4. Verse 180.

5. Cf. Kātyāyana Verse 100.

oath, and also consists of a denial, that has the illusive appearance on account of the combination. This is the meaning of the sentence. The rest, as also the expression 'in one part' repeated twice is a repetition.

Indeed, in such a case what would be the effect of the text 'In one suit &c.'? The answer is: In one suit in a simultaneous manner, there cannot be (adduced) evidence by both; this and the like is its meaning. Or shortly stated, that text is intended to prohibit evidence by both to be simultaneously adduced. 7 (1).

After the written answer is filed, the establishment of 10 the point at issue being dependant on the means of proof, it may be asked who should exhibit the proof? Anticipating this the Author says

### Yâjñavalkya, Verse 7(2).

Next, the plaintiff should immediately have written down the evidence by means of which the matter in dispute 15 (or alleged) is (proposed) to be established. 7(2).

Mitâksharâ:—Tatah, next, after the answer; arthi, the Plaintiff, one who has to gain a point; sadyah, immediately, even immediately after; lekhayet, should have written down. What has been sworn to in the complaint and is to be established is the Pratijñâtârtha, the matter in dispute. Of that the sâdhana, means of proof, i.e. that by which the matter is to be established, i.e., the measure (of proof). Here, by saying (the plaintiff) 'should have immediately written down', it is implied that some delay is allowed in stating the answer. That, moreover, will be discussed in detail later on.

By saying that 'the plaintiff should have written down evidence for proving the point at issue' it is

P. 9 L. 15. meant that the party who has to gain the point should have written down the means of proof of the point at issue. Therefore, in an answer where a previous judgment is pleaded, the previous judgment itself being required to be proved, the defendant himself is regarded as the plaintiff, and so he himself should have his means of proof written down. So also in an answer containing a special plea, the special plea itself being

required to be proved, he who sets up the special plea, himself comes to be (in the position of) the plaintiff, so he should have the proof written. In a denial, however, the original complainant is himself the plaintiff, and he should exhibit the means of his proof.

By saying: "Next the plaintiff should have written down, &c."

it is intended to be laid down that the plaintiff

P. 9, L. 19. himself should cause the proof written, and none else. And, hence also, in the case of an answer

by admission there being no point at issue, neither the complainant nor the defendant being in the position of a plaintiff, there is no indication of the means of proof, and thus, it follows, that the trial comes to an end at that very stage. This very rule has been clearly stated by Hārita :—"In an answer containing the combined pleas of former judgment and special exception, the defendant should exhibit proof; whilst in the plea of denial, the original plaintiff; (but) in the plea by admission, that proof, i.e., is not necessary at all."

### Viramitrodaya

The determination of the result by the king being based on evidence, and the exhibition of that being the duty of the plaintiff, in regard to him, the Author states the third part of the proof

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### Yājñavalkya, Verse 7 (2)

*Tatāk*, 'next,' where a proper answer has been made by the defendant, and also caused to be written by the king; *arthi* 'The plaintiff', i. e., the party who has to establish the statement made, respectively either the plaintiff or the Defendant as the case may be; *pratijñātasya*, 'of the point affirmed,' i. e. of the matter duly stated by oneself, *sādhanam* 'means of proof' such as witnesses, documents, and the like, himself having set out, should cause to be written through the officers of the king. By the use of the word *sadyah*, 'immediately,' is meant that in the matter of the exhibition of evidence, no delay should be caused. Thus says Kātyāyana': "No loss of time should be caused by the king in the examination of witnesses; great harm might result from (lapse of) time, in the form of the taking away of justice."

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That means of proof, moreover, is twofold, human and divine; as says Brhaspati: "Evidence is declared to be twofold, human and

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divine. Each of these is again divided into a number of branches by sages declaring the principles of law. Witnesses, documents, and inference, thus human evidence is declared to be threefold. Commencing with the balance and ending with the Dharma, thus the divine evidence 5 is declared to be nine-fold."

That evidence, moreover, is the means of proof. This has been elaborated above. Such proof, however, is not necessary in an answer of admission. In regard to other answers, Vyāsa states a rule thus: "In the pleas of *res judicata*, and that of a special plea, the defendant should 10 adduce evidence; in the answer of a denial, the first deponent (the plaintiff); in an admission, one need not prove." Here, by the use of the word 'special plea', is intended to state a stronger reason, as the Author will state<sup>1</sup> further on: "If the first claim be invalidated, then those of the next claimant should be examined." Kātyāyana<sup>2</sup>: "If 15 after the plea of admission, a special plea is set up, and if it is stronger, then the case of the defendant must be proved; in the absence of that, the other is deemed to be established". The cause of the debt viz. the acceptance of the loan, as alleged before by the plaintiff being admitted i.e. accepted, another stronger reason, such as payment back and the like, 20 if it is set up in the defendant's statement, then that is to be established, and not the other, by reason of the rule of equal and less force. This is the meaning.

In a plea of denial, however, the burden of proof by this-worldly<sup>3</sup> evidence is on the plaintiff; while of the divine evidence in the form of an ordeal, oath, or both, on the defendant himself: "No one should compel the complainant into an ordeal; to the one who is complained against should be administered an ordeal by those well-versed in the (rules as to) ordeals." In this text<sup>4</sup>, in the first half a prohibition against the complainant contained in the first half, that kind (of evidence) is 25 restricted in the latter half to the person proceeded against upon the principle that "when a fact which is established, is opened out," it involves a restrictive proof. So says the revered Mītra. The Sāmpradhyikas, however, hold that here, by the word complainant is meant 30

1. Yājñavalkya II. 17.

2. Verse 191.

3. साध्यते तद्देशात्; the other reading is असाध्यते तद्देशात्—is established, and not the other. In the comments on this verse Viramitrodaya appears to accept this reading.

4. i.e. human evidence.

5. Cf. Kātyāyana Verses 244, 411.

a complaint regarding theft, assault, and the like accusations. In the case of a denial against a claim for a debt etc., they say that even the divine proof is also on the plaintiff. (7)

S'ulapāni  
Yājñavalkya, Verse 7.

After the defendant has comprehended the meaning of the plaint, his answer should be caused to be written in the presence of the deponent of the plaint. Kātyāyāna<sup>1</sup> mentions the time for the answer: "For transactions of recent occurrence, immediate only is ordained; while for those of duration, the chief authority may give time to the defendant." 5

The characteristics of an answer and its varieties are stated by Nārada<sup>2</sup>: "Men versed in law consider that an answer, which comprehends (the points raised in) the plaint, is concise, unambiguous, not inconsistent, and is easily intelligible without an explanation." "Comprehends" i. e. covers. "A denial, an admission, setting up a special plea, also; and a former decision, are the answers stated to be four by those versed in the principles (of law)." "If a defendant give a denial to a claim made, that (answer) is known in law as a denial." As says Bhṛhaspati: "After hearing the plaint, if the defendant admits it, that is called an admission by the scholars of the Sāstris. If a defendant, admitting plaintiff's written allegations, sets up a plea, that is called a confession and avoidance. If a person, though defeated by the customary procedure, again files a written complaint, the answer would be, 'you were defeated formerly'; this is called the plea of a former judgment." 15 20

After the recording of the answer, one should endeavour to prove it. So says Bhṛaspati<sup>3</sup>: "After the first statement and the answer are recorded, and the judicial proceeding has commenced, the two are welded together like two balls of hot iron. Where there is a doubt about the truthfulness of the witnesses for both, and the two are in suspense, then as wise men the two should effect a compromise (while the uncertainty lasts)." 25

In the absence of a compromise, the rule in the text<sup>4</sup>: 'then the plaintiff &c.' prevails. By the word plaintiff, each is indicated in regard to his own side, and is to be so taken. Thereafter, the plaintiff should cause to be recorded the proof of such witnesses, documents &c., which are the means of establishing the point made out in his plaint, and which have the characteristic of truthfulness; and not after an interval of time. (7). 30 35

1. Verse 153.

2. In the Smṛtīchādrikā this text is cited as of Prajāpati; see P. 42 L. 30.

3. Ch V. 11, 12.

4. Yājñ. II. 7.

What next? So the Author says

**Yâjñavalkya, Verse 8 (1).**

If it (the proof) succeed, he obtains success; if otherwise, the reverse i.e., if it do not permit, he fails. 8 (1).

- 5      Mitâksharâ :—Tasya, *of that*, i.e., of the means of proof having the characteristics inferable from the several texts to be mentioned further on, about the written documents, witnesses, &c., presently to be described, siddhau, *in the case of success*, if accomplished, siddhim, *success*, in the form of accomplishing the point  
 10 at issue, prâpnoti, *obtains*; ato, *other*, than this mode, anyathâ, *otherwise*, the non-establishment of the (means of) proof in any other manner brings on, âpnoti, *the reverse*, viparitam, i.e., the non-accomplishment of the point at issue which is indicative of a defeat. This is the construction.
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**Viramitrodaya**

The Author states the fourth stage, known as the decision of the point involved

**Yâjñavalkya, Verse 8 (1)**

- 20      Tasya, 'of that', i.e. of the point laid out by evidence such as the witnesses or other means, siddhau, 'if established', i.e. if borne out, siddhim, 'success', i.e. victory; anyathâ, 'otherwise' i.e. if not proved, viparitam, 'reverse', i.e. non-success, âpnoti, 'he gets'. This is the meaning. According<sup>1</sup> to the Mitâksharâ, viparitam, 'reverse' means bhangam, 'broken'; that is doubtful. 8 (1)
- 

- 25      The Author having thus described the nature of a judicial trial now concludes

**Yâjñavalkya, Verse 8 (2).**

This legal procedure is declared to be of four-fold character in litigation. 8 (2).

1. But no such position appears to have been taken by the Mitâksharâ.

Mitâksharâ :—*The legal procedure, Vyawahâra, referred to in the text<sup>1</sup>, viz. "A king should hold trials, &c., has thus been upadarsitah, described, to be of four-fold character, i.e., by imagining it to consist of four parts in litigation ; i.e., in the chapters on payment of debts, &c., as consisting of four parts and being of four kinds. Of these the first part is called the part relating to the plaint and begins with the text<sup>2</sup>: "In the presence of the defendant (the plaint) should he written, &c." The second part is the part relating to the answer and is introduced by the text<sup>3</sup>: "the answer of one (i.e., of the defendant) who has heard the plaint should be taken down in writing." The third part relates to evidence and proof and begins with the text<sup>4</sup>: "Next the plaintiff should cause to be written, &c." The fourth part contains the decision regarding the proof of the point at issue and is in the text<sup>5</sup>: "If it (the proof) succeeds, he obtains success."*

As is said "When disputes regarding their interests arise between men, their settlement according to rules

\* Page 10. laid down in texts is called a *Vyavahâra* or a judicial trial. The four divisions of it, viz., the plaint, the answer, the proof, and the decision<sup>6</sup> are laid down in their proper order ; hence it is called four-fold". In an answer by admission, however, the proof is not exhibited, and thus the point at issue is not (necessary to be) established (at all), and so it has not the part which contains the means of proof. So it has two parts only. After the answer is recorded, the decision<sup>6</sup> of the councillors

1. Yâjñ. II. 1. p. 632 l. 12. 2. Yâjñ. II. 6. see p. 651. l. 11-15 above.

3. Yâjñ. II. see p. 651. l. 17 above. 4. Yâjñ. II. 7. p. 672 l. 13 above.

5. Yâjñ. II. 8. see p. 676. l. 4 above.

6. परामर्शः=प्रयत्नस्य पक्षानुसिद्धेभीः परामर्शः उच्चेते. e. g. विहितयाप्यपूर्वस्य विहितयाप्यपूर्व-पर्वतानुसिद्धेभीः परामर्शः=पूर्वो विहितंगम्यः पर्वतानुसिद्धेभीः परामर्शः Here the परामर्श would be the mental process deciding the onus by sifting the statements in the pleadings with the view of discovering

(1) how far these statements are relevant to the issue पक्षानुसिद्धेभीः

(2) " " , , have a reference to the relief claimed साध्याद्याद्यः.

The opponent says that परामर्श characterized as above has been recognized as a distinct stage in reasoning, how is that Yâjñavalkya does not make it a

by ascertaining on whom, between the plaintiff and defendant, the (onus of) proof should lie has not been mentioned by the Lord of Yogis (Yâjñavalkya) as a (distinct) part (stage) in a judicial proceeding. And as it (the decision as to the onus) has no reference to 5 the parties, it has not been mentioned here as a (distinct) part in a judicial proceeding. This is as it should be.

Here ends the Chapter on General Rules of procedure

### Viramitrodaya

The Author rounds up the body of *Vyawahâra* detailed before

#### Yâjñavalkya, Verse 8 (2).

10 *Viddeśhu*, 'in disputes', such as the recovery of debt and the like, which are the subject matter for consideration, *ayam*, 'this', of this, character, containing the plaint etc. and therefore, *chatuṣhpâd*, 'four-footed' i.e. having four parts, the meaning of the word *Vyawahâra*, has (thus) been pointed out i.e. illustrated. The illustration is of any *vyawahâra*. Thereby, 15 'In the case of a *dsai*, it is four-footed, as also in the plea of confession and avoidance, and in the plea of *res judicata*; in the pleas of admission it should be known to be two-fold', thus in this text of Brhaspati<sup>1</sup>, that a two-footed *vyawahâra* has been mentioned, does not matter much. 20 'In admissions' i.e., this rule should be so observed 'also' in a plaint to which an answer is not possible. Although even in an (answer by) admission, including the decision, there are three parts, still there, for the declaration of a decision there being no necessity for a separate step, the statement that it is two-footed is proper. On account, however, of a statement as to the ignorance of 25 circumstances on which an answer may be founded, it having receded from the position of an answer, including also this, it can be regarded as having four parts. 8 (2).

Here ends the Chapter on General Rules of Procedure. . .

#### S'ulapâni

#### Yâjñavalkya, Verse 8.

Upon the evidence adduced being decided to be true, *siddhim*, 'accomplishment' i.e. success, *pripnati*, 'he obtains.' In the case other distinct *Pâda* (section or chapter). The author replies in the text इत्यामिदानंतरे &c. This is the प्रयोगकलित्यात्. See Smṛtichendrikâ pp. 50-54 and note on p. further on. केवलुपैदेव विचारण एवाकलिन्-प्रयोगिषी य. ६. १. १.

1. Ch. III. 3; see also Kâtyâyana, Verse 245.

complainant should not be allowed to be charged with an offence, na pratyabhiyojayet, no counterclaim should be allowed.

Although a 'special plea' has the appearance of a counter-claim, still inasmuch as it is intended for removing a charge against oneself, it does not come under the present exception. Hence, this prohibition is against that form of counter-charge which is not intended as an answer to a charge against oneself. This has been laid down as having reference to the Defendant.

The Author now states the rule as regards the plaintiff

10 Yâjñavalkya, Verse 9 (2).

Nor should any other person be allowed to file a complaint against one who is already under a charge, nor what has already been alleged should be allowed to be changed.

15 Mitâksharâ :—Abhiyuktam cha nânnyeneti, nor should any other person be allowed to file a complaint against one who is already under a charge &c. As against one who has (already) been charged by another, and who has not got over the charge, another complaint should not be allowed to proceed; moreover, uktam, 20 alleged, what was deposed at the time of the first complaint, that viprakृtim, change, (if) containing a contradiction, na nayot, should not lead, should not be allowed. The purport is this: Whichever fact has been deposed to in whatever form at the time of the first complaint, that fact should be taken down in the same manner at the 25 time of the formal complaint, and not otherwise.

It may be asked: It has already been laid down in the text<sup>1</sup>, viz. "Whatever is alleged by the plaintiff should be reduced to writing in the presence of the defendant," why then has it again been repeated in the text<sup>2</sup> "nor should what has already been alleged be allowed to be changed?" The answer is: By the text "whatever is alleged by the plaintiff" is meant that those facts which have been deposited to at the time of the first complaint, (the same) should be caused to be written down in the same manner at the time of the Bhâshâ or

1. Of Yâjñavalkya II. 6.

2. Yâjñavalkya Verse 9 (2) above.

(formal) plaint; as it has been said that "a change in the subject-matter ought not to be allowed even though it be made in the same suit"; as e. g. having alleged at the time of the first complaint that 'he (the defendant) borrowed a hundred *rupees* at interest', it should not be (allowed to be) stated at the time of the formal plaint or *Bhāṣhā* in the presence of the defendant that 'a hundred *clothes* were borrowed at interest.' In that case, even if there be no change in the suit itself, there being a change in the subject-matter, he (the plaintiff) would be amenable to a penalty as a *kīna-wādi*—one guilty of prevarication.

By the text : "nor what has been alleged should be allowed to be changed," a prohibition against a change into another suit is laid down even in cases where the subject-matter remains the same. As e. g. having said at the time of the first complaint that 'having taken a hundred rupees at interest, he (the defendant) does not repay (the amount), he says at the time of the second or formal complaint (*Bhāṣhā*) that 'he deprived me of a hundred rupees by force.'

There<sup>1</sup>, a change to another subject-matter is prohibited, while here<sup>2</sup>, a change in the nature of the suit is prohibited, and thus there is no fault of repetition. Nārada<sup>3</sup> has made this very thing clear : "He who abandons his first allegations, and resorts to a new one, should be regarded as a prevaricator on account of the change in the suit".

A prevaricating litigant becomes amenable to punishment, but he does not lose his suit. Thus this direction

\* Page 11. given in the present verse, viz. "until the complaint is disposed of &c.", is intended to avoid mistakes on the part of the plaintiff and the defendant, and has no reference to the proving or not proving of the point in dispute. Hence the Author says further on<sup>5</sup>: "After discarding all circumvention, the king should decide disputes according to the actual facts."

1. i.e., in the text प-यस्ति यस्ते &c.

2. „ „ मोक्षं विपक्षिणि नयेत् । 3. II. 24.

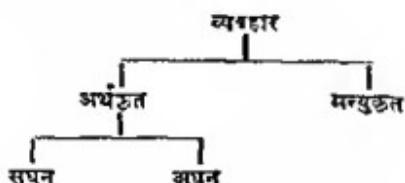
4. पद (Pada) as used here is intended to indicate a suit, the statement of the cause of action; while वस्तु (Vastu) indicates the subject-matter of the suit, or the point involved.

5. Yājñ. 11, 19.

This (limitation of the rule), however, should be observed in suits relating to property<sup>1</sup> or title. In disputes arising out of acts resulting from violence, plaintiff loses (also) his suit if he makes a false statement. As says Nârada "A verbal trickery does not vitiate all actions relating to property; for in suits relating to cattle, women, land, immoveables and the recovery of debts, the claim is not dismissed even though the claimant is liable to a penalty."<sup>2</sup> This is explained (tbns): *In all suits relating to property, not in those originating in anger or passion, a verbal trickery, even if it be through mistake, does not annul, does not get defeated i.e. he does not lose his case; his case that is pending.* An example here is 'cattle, women &c.' i.e. as in suits relating to cattle, women, recovery of debts, by an erroneous declaration a plaintiff does not lose his case, though he is (otherwise) liable to penalty, so (is the case) in all suits relating to property.

From the specification of 'suits relating to property,' it appears that in suits arising out of acts of violence, the party loses also the claim that is pending, in the case of an erroneous statement. As e.g. having stated at the first complaint that "I was struck on the head by him with his foot", if he says at the time of the formal complaint or *Bhâgîha* that "I was struck (either) by the hand or by the foot", he, not only is amenable to punishment, but his complaint is also dismissed. 9 (2).

1. Note the following divisions of व्यवहार.



2. Ch. II. 25. Dr Jolly reads संदेशी for सोलेशी.

3. पत्रिकी is a better reading, पत्रिकी another woman.

To the rule—"until the complaint is disposed of, no counter-claim should be allowed against him" the Author mentions an exception

## Yājñavalkya, Verse 10. (1)

A countercharge may be allowed in cases of delicts<sup>1</sup> and felonious crimes.

Mitākṣharā :—Kalahe, *in delicts*, in cases of defamation and assault, sāhaseshu, *in felonious crimes*, in cases of destruction of life by means of poison, weapons &c. (In such cases) when there is a counterecharge, it should be allowed against the complainant even while his own complaint is undisposed of.

It may be urged that even in such a case, the countercharge would not be a proper answer inasmuch as it does not meet the case of the plaintiff, and thus (in fact) there being another *pratijñā* or complaint, it is equally impossible to go into a simultaneous proof (of both the charges). To this the answer is : True ; but here a countercharge is not allowed with a view to a simultaneous proof, but for an abatement of the punishment, or for avoiding or preventing an excess of it ; for, where the complaint is, 'I was beaten or abused by him,' and the countercharge is 'I was first beaten or abused by him,' there would be a light punishment. As says Nārada<sup>2</sup> : "He who is the first to inflict an injury is assuredly guilty ; he who retaliates is likewise guilty ; but for the first, the punishment is heavier." Where, however, the assault etc. is commenced simultaneously for both, an enhanced punishment is avoided. Vide the text<sup>3</sup> : "When both parties simultaneously commence abusing or beating each other, and a difference (in degree) cannot be found, the punishment for both would be the same."

Thus, even if proof of simultaneity is impossible, still in cases of abuse &c. a counter-charge has a value; in suits for the recovery of debts &c., however, it is simply useless.

1. विद्यु—violence; इति॒देव॑त्तेषां इति॑स्मात् ; *Medhātithi*.

2. Ch. XV. 2.

3. Cf. Nārada Ch. XV. 8. Dr. Jolly's text reads the first quarter as  
प्राप्तं दोषात् त्वे:

### Viramitrodaya.

The Author mentions the function of the plaintiff in the interval

#### Yājñavalkya, Verses 9, 10 (1).

*Abhiyogam*, 'complaint', the accusation made by the complainant,  
 5 *anisityra*, 'without removing', i.e., is disposed of by the decision  
 resulting in success or defeat, against the complainant, the respondent,  
*na pratyabhiyojayet*, 'should not be allowed to counterclaim', i.e.,  
 should not be charged for a counter offence committed by him.  
 Anyena, 'by another', while the accusation first made is not removed,  
 10 until its removal, the defendant should not be allowed to be charged.  
 The substance of the complaint laid should not be allowed to be  
 'changed', *tiprakṛtam*, distorted, i.e., the plaintiff or the defendant  
 should not be allowed to write otherwise.

As regards the clause 'no counter-claim should be allowed  
 15 against him', in a mutual fight, in abuse, and in cases of serious  
 offences such as the abduction of women, homicide, and the like, and by  
 the use of the word *cha*, 'and', in cases of assaults and thefts, one  
 may file a counter-complaint. In an accusation such as 'I was  
 20 abused by him', 'I was beaten by him', one may state as by way  
 of an answer 'I was also abused', 'I was also beaten'. By the use of  
 the first *cha*, 'and', are included the grown up and the like. 9, 10 (1).

### S'ūlapāṇi

#### Yājñavalkya, Verso 9.

One against whom an accusation has been made, without giving an  
 25 answer, should not be allowed to charge the maker of the first complaint  
 with a counter-complaint, simultaneously more than one trial being  
 impossible.

The complainant also must not file another complaint against  
 the respondent, as on account of the abandonment of the first complaint,  
 30 there may be the danger of detriment to the sworn statement. The  
 allegation which has once been made should not be allowed to be  
 distorted by an allegation of a different kind, as there would be the  
 fault of variation in the pleading. (9).

After laying down the rules for the plaintiff and the  
 35 defendant, the Author mentions the functions of the Presiding Officer  
 (of the Court) and his Councillors

## Yâjñavalkya, Verse 10 (2).

From both a security should be taken, (such as one) who would be competent to satisfy the object of the judgment.

Mitâksharâ :—Ubhayoh, from both, i.e. from the plaintiff and the defendant. (That which) in all suits (is) the object of the judgment or decree is kâryanirñaya, the object of the judgment. The word *kârya* has been placed first under the rule<sup>1</sup> ‘Ahîagnyâdîshu.’ The object of the judgment, moreover, is the payment of the amount decreed, and the payment of the fine. For that, samarthah, competent, pratibhû, surety; he who becomes a substitute for him, i.e. in that cause, becomes like him, is a *Pratibhû*; (such a one) should be taken by the Officer presiding the Court consisting of Councillors.

If such a one is not possible, men should be commissioned to watch the plaintiff and the defendant, and the daily wages of these (guards) should be ordered to be paid by those (plaintiff and defendant). As says Kâtyâyana<sup>2</sup>: “If, however, the plaintiff has no surety competent for the cause, he should be (kept) under a watch; and (he) should pay the wages to the servant at the end of the day.”

## Viramitrodaya.

After having stated the duties of the plaintiff and the defendant, the Author mentions the function of the head of the Court along with the Councillors

## Yâjñavalkya, Verse 10 (2).

Of the plaintiff and defendant who had appeared for (getting) justice, for entering upon the trial, a security should be taken, as even regarding the plaintiff, there being the possibility of his running away through fear of penalty. Of what kind? Samarthah, ‘competent’ or able to meet the purpose of the decision, i.e., for the payment of the amount established, as also of the penalty. After the manner of the rule<sup>1</sup> dhitagni, &c., the word *kârya*, has been placed first.

1. Pâṇini II. 2-37. आहिग्नीयः. In the compounds आहिग्नी and the like the Nishthâ formed words may optionally be placed first i.e. आहिग्नी, जात्यूष etc.

2. Verse, 117.

Or for the object, i.e., for the decision to be given, a security should be taken. It may not be said, having regard to the order<sup>1</sup> of its statement, that the security to be taken is after the decision of the suit, therefore it has been stated that he should be one competent to satisfy the judgment. Or, for the object, which is the subject matter of the suit, such as the recovery of debt &c., for its decision, a security should be taken, (as) if the plaintiff runs away a decision would be impossible. For the absence of the security, however, Kātyāyana<sup>2</sup>: "If, however, there be no surety given by the plaintiff who has a cause for dispute, he should be kept under watch, and so guarded he should give wages to the guard at the end of the day". 'Guard', i.e., the messenger of the king. 10 (2).

## S'ulapīṇi.

## Yājñavalkya, Verse 10.

The Author mentions an exception; *kalaḥ*, 'delicts' e.g. slander,  
 15 as also in charges of assault with weapons &c., 'I too was attacked with a weapon by him', such a counter-charge may (be allowed to) be made. In a complaint that 'the attack was made on me when I was quite innocent', in a counter complaint in the counter-charge, the fault of simultaneously by numerous complainants does not occur.  
 20 A surety should be taken who would be competent to keep the complainant and the respondent under restraint, until the decision of the proceeding. In the absence of a surety, he might change, so says Kātyāyana<sup>3</sup>. "If, however, there be no surety given by the plaintiff who has a cause for dispute, he should be kept under watch, and so  
 25 guarded he should give wages to the guard at the end of the day." 'Guard', the royal watchman. (10).

It has been said that a surety should be taken by the presiding officer of the Court consisting of Councillors from the plaintiff and the defendant, who would be able to satisfy the object of the judgment;  
 30 it may be asked what is that object of the judgment? Anticipating this, the author says

\* Page .

## Yājñavalkya, Verse 11.

When, upon a denial (by the defendant), a claim is proved, he (the defendant) should pay the amount claimed

1. अद्यते न इ. e. since the rule regarding the taking of a security comes to be mentioned after the decision, following the order of its statement.

2. Verse 117.

(to the plaintiff) and also an equal amount to the king. One setting up a false claim should pay double the amount claimed.

Mitâksharâ :—Of the claim alleged by the plaintiff if upon a denial by the defendant the claim is proved, bhâvitah, by the plaintiff by means of witnesses &c. and thus brought home to the defendant, then the defendant should, give the amount, dadyâd dhanam, in dispute to the plaintiff and also an equal amount to the king, Râjñe cha tatsamam, as a fine for the denial. If, however the plaintiff is unable to establish (his case), then he himself becomes mithyâbhîyogi, a false claimant, and as such should give to the king, dadyâdrâjñê, double, dwigupam, the amount of the plaintiff abhiyogât, i. e. the amount claimed in the plaint.

In the case of the plea of 'res judicata' and of 'confession and avoidance' this same rule should be applied. There, too, when the plaintiff is shown by the defendant to have set up a (false) denial, he should give to the king a fine equal to the amount in dispute. If, however, the defendant is unable to establish either the plea of res judicata or of the special plea then he himself should give double the amount to the king as for having set up a false plea, while to the plaintiff the amount claimed or in dispute. In an answer of admission, however, there is no fine.

This, however, has a reference only to the suits for recovering debts. It is not of universal application, inasmuch as special fines have been mentioned in (all) other (kinds of) suits, in their respective places, and also as it cannot possibly occur in suits where the subject-matter is other than money.

And although the rule<sup>1</sup> that 'a debtor should be made to pay by the king &c.,' has a reference to or applies in suits relating to the recovery of debts, we will particularize it there<sup>2</sup> only.

The same rule should even be used as having a reference to all (kinds of) suits. How? If upon the defendant's setting up a denial

1. Verse 117.

2. See Verse 42 further on.

of the claim it is proved by means of witnesses &c. by the plaintiff as against the defendant, then *equal to it*, tatsamam, i.e., to the very amount specified respectively in each (kind of) suit. The word *cha* is used to restrict the extent (of the fine). ‘The amount should be paid to the king’ is the (construction based on) repetition.

If the complainant is not able to bear out this complaint, then the rule laid down is that a double amount of that mentioned in each suit should respectively be paid by him as a fine for (being) a false complainant. Here also in the ples of *res judicata* and of a 10. ‘special ples’ the rule should be applied similarly as before.

### Viramitrodaya

The Author mentions the procedure in regard to a defeated defendant or plaintiff

#### Yājñavalkya, Verse 11.

13. *Nihate*, ‘upon a denial,’ of a true claim by a false statement *dhriti*, ‘when proved’ by witnesses also the matter being brought home the defendant should give to the plaintiff the amount which is the subject-matter of the suit. *Rajte cha tatsamam dhanam dadyat*, ‘to the king also he should pay an amount equal to it’ in the form of a penalty. A 20 plaintiff, setting up a false claim, should pay to the king an amount double that in dispute. By the use of the word *cha*, ‘and,’ the Author adds another penalty in cases of slander &c. Here Manu<sup>1</sup>: “Upon a denial of the claim, if it is established by evidence, he should be ordered to pay the debt to the creditor and a small fine according to capacity (52). 25 He, to the extent to which he denies the claim, or to the extent to which he speaks falsely; those two adepts in illegality should be punished with a fine double of that” (60). Here, moreover, the determination of the punishment of those who deny the claim, in equal or

1. Words have the force of प्रयुक्ति or प्राप्युक्ति i.e. of having a wider surface covered by the connotations than is indicated by the denotations. In this connection the distinction between विषय and परिवर्त्या may be compared. In ‘पञ्चवक्तव्य नला मद्यः’ all animals other than the वंचनाः are excluded (प्राप्युक्तिः) while in ‘समे देहे यजेत्’ it is not so much the exclusion (प्राप्युक्तिः) of विषयैश्च, although that may be the ultimate result, as the selection of a सम्येत (प्रयुक्तिः) that is aimed at. So Vijnaneshwara says that by the use of the word *cha*, Yājñavalkya means to lay down that an amount equal in amount to that in dispute, and not more or less, should be levied as the king’s fine.

2. Ch. VIII verses 52 and 60.

double the amount should be made by a consideration of the caste, age and wealth, of these. As the Author has said: "After taking into consideration, the country &c." (II).

## S'ulapāṇi

Yājñavalkya, Verse 11.

5

In a plaint regarding the payment of money, one who has filed an answer of denial, when the claim has been established against him by means of witnesses and the like, the debtor should pay the amount to the creditor. To the king also he should pay an equal amount as penalty. In the case of a denial and an admission, Vyāsa has mentioned half as penalty: "After denial, when the plaintiff voluntarily admits the claim, that should be known as an admission; for that a half penalty has been declared". Other penalties in particular cases, should be ascertained from other Smṛtis by regard to the existence or non-existence of the element of intention as an ingredient in the offence.

10

One who offers a false complaint should pay double the amount of the complaint to the king. In regard to the Śudra, Nārada states a special rule: "Those of the Śudra order who file a false complaint against the twice-born, the king should cut out their tongue and impale them upon a cross." (11)

15

By the text: 'Next, the plaintiff should immediately have written down the evidence by means of which the matter in dispute is to be established,' it has been shown that (some) time should be allowed at the stage of filing the answer; the Author mentions an exception to this

20

Yājñavalkya, Verse 12.

In charges regarding felonies, theft, assault, and cow-killing, and in complaints about risk to life and property, and in complaints against defamatory imputations, as also in cases concerning women, the parties must even immediately be asked to plead. In other suits time has been allowed under the discretion (of the court).

25

Mitākeśvara:—Sāhasam, a felonious crime, by means of poison, weapons, and the like, the killing of animals and doing like

1. Compare this with Nārada I. 45.

2. Āchārādhya Yājñavalkya Verse 368.

licks, touches by the end of the tongue or ruhs,—an instance of a deformity in action.

Asya lalāṭam swidyate, whose forehead perspires, becomes smeared with drops of perspiration. Mukham

5 Characteristics cha Vaiwarnyam, countenance also has a of an unfit person. changed colour, a changed colour i. e. palour or shadiness; eti, assumes,<sup>1</sup> are instances of bodily perturbation. Parisuṣhyat-skhaladwākyā, who has a stammering and incoherent speech; parisuṣhyat, stammering with a stutter; 10 skhalat, incoherent. He whose speech is of such a sort. A man of this description. Viruddham, inconsistent, the last contradicting the first; bahu bhāshate, talks much; is an instance of perturbation in speech. To the words, wācham, of another, he does not attend by giving a reply; nor does he attend to the gaze, chakshup, 15 of another by a responsive look—a sign of mental deformity. Tathā Oṣṭhau nirbhujati, moreover bites his lips, i.e. twitches—is also an instance of a bodily change.

This, however, has been mentioned to indicate a probable existence of a defect; not as a positive mark of the (existence of) defects 20 as it is difficult to appreciate the distinction between a natural defect and a defect caused by a special circumstance. And even if perhaps a skilful person draws a distinction, still that (by itself) will not be a sufficient cause for a dismissal of (the suit). No one would set about actually performing the exequial rites by merely observing (the) signs 25 (of impending death) in a dying man. Similarly, even if it be known from the signs that the party would be defeated, still, that (by itself) is not sufficient to bring about (an actual) defeat.

#### Viramitrodayn.

The evidence to be adduced by the plaintiff has been stated 30 before. Now, what cannot be adduced by him, and which is to be inferred by the Chief Judge, the Councillors and the rest, viz. inferential evidence otherwise called the *pratyaklita*, the Author points out

Yājñavalkyn, Verses 13, 14, 15.

Mano-tatk-karma-karmabhir yah swabhāvād, 'who in mind, speech, 35 body and action exhibits by his own movements (misdeeds) i. e. without

<sup>1</sup>, Lit: goes or reaches.

any other causee possibly due to disturbance etc., *vikyâtim* 'a change,' 'a perturbation,' i. e. *yâti* 'goes', i. e. reaches; *ea*, 'he'; *abhiyoge*, 'in a complaint' i.e. in a dispute, *sâkshye*, i.e. 'testimony' i. e. in a proceeding as a witness; *dushâh parikirtitah* 'known as defective and unfit', in the Sâdâtra. Therefore a complaint made by him or a testimony given by him is not taken as proof. This is the meening. 5

The Author meations the perturbation itself: *Desat*, 'from a place' i. e. from the place of his own resilence, *desântaram* 'to another place'; *yâti*, 'goes', in other words, in regard to his resideace does not anywhere exhibit stability; *ekkini*, 'lips' i. e. border of his lips, by a repetition i. e. often and often with the tip of his tongue; *ledhi*, 'licks', i. e. rubs. *Aeyâ*, 'of him,' i. e., of this defective person, *lalatam*, 'forehead,' *swidigate*, 'perspires,' is saturated with perspiration. *Mukham cha*, 'mouth also'; *vaivarnyam*, 'changed into non-colour,' i. e., palour, *eti*, 'attains' i. e. reaches. *Parisushyat*, 'dry' i. e. the mouth becoming dry, *ekhalat*, 'stammering' i. e. incoherent; one who haas this, is that. Thus it is a *Karmadâraya*, 'componad.' *Viruddham*, 'inconsistent,' i.e. the prior and the succeeding portions mutually contradictory; *bahu*, 'much,' much more then is useful, *bhâshate*, 'speaks,' i. e. utters. *Wdk*, 'speech,' to oneself, words adressed by another; *chahshuh*, 'eyes' of another bent towards one's gaze. This is a *disandha compound* indicating as if it were a single object; *No pajayati*, 'does not respond,' i. e. does not meet by a return speech or by a response in gaze. *Oshhan*, 'lips,' *nirbhujate*, 'bites,' i. e. distorts. Of these perturbations the mental &c. may be inferred according to the local conditions of each. By the use of the words, *cha*, 'and,' *api*, 'even,' *tathâ*, 'and also' is intended to indicate that "Although asked by many to speak, does not speak, and does not prove what he has stated; or who does not know what is the first point, and the point next following; anch a one fails in the suit. (57). Having declared 'I have witnesses who know,' when asked to point out, who does not point out; the officer of the law-court, on (account of) these grounds, may declare him also to be non-suited." (58). These and others stated by Manu<sup>2</sup> and others are also to be included. (13, 14, 15).

### Sûlapâgi.

The Author mentions the characteristics of a faulty person in 35 the *pratyâkalita* part

Yâjñavalkyn, Verses, 13, 14, 15.

*Wâkchashuriti*, 'speach, gaze &c.', to the speech of another, does not respond by a reply, and also another's eye, he does not meet hy

1. See note on page 690.

2. Ch. VIII. 57, 60.

looking back *Nirbhîyûti*, 'hites', i.e. distorts, exhibits a perturbation; The meaning is, is not able to cover these. As in the Râmâyana: "Although covered in the outward form, it is not possible to be covered; indeed from its force it exhibits the internal feeling of men." 'Outward form' i.e. 5 the bodily movements. The mouth, in the form of a changed colour and the like, the mental perturbation is inferred from the bodily change. These movements from place to place and the like are indicative of a defect (13, 14, 15).

### Yâjñavalkya, Verse 16.

10 He who tries to substantiate a doubtful claim independently (of the means of proof), he who absconds, as also he who when summoned into the court does not say anything is considered to be a false litigant and punishable as such.

Mitâksharâ :—Moreover, *sandigdham artham*, a 15 doubtful claim, even when not admitted by the (defendant) debtor, *yâh swatantrâh*, who tries to substantiate independently of the means of proof i.e. by confinement, arrest &c., *sa hino dandyascha*, he is considered to be a false litigant and also becomes punishable as such. Likewise he who after himself having admitted a claim, or after a 20 claim was established by means of proof, absconds *nishpatet*, when asked (to pay). He, moreover, against whom a claim has been filed and who even when summoned, *âhûto*, by the king into the court, does not say anything. He also is considered a faulty litigant and punishable as such. This is the construction.

25 As this verse has been introduced by the text<sup>1</sup> "is known as defective and unfit to be a complainant or a witness" it might be supposed that this verse is intended simply for detecting a faulty litigant (without more), so the word *dandyâ* (punishable) has been used. Moreover, from the text<sup>2</sup>: "even if one makes himself amenable 30 to punishment as guilty, he is not liable to have his suit dismissed" it has been shown that a party does not lose his claim. Intending to avoid such a conclusion here, the author has used the word *hina* (faulty).

1. Verse 15 above p. 691 II. 22-23.

2. of Nârada II. 25, see above verse (9) where the full text is cited..

## Viramitrodaya.

Some deformities, although indicative of defectiveness, may even affect one who is not punishable; so the Author says

Yājñavalkya, Verse, 16.

*Sandigdham*, 'doubtful', i.e., not decided in his favour by the investigation, *artham*, 'claim', and therefore also *swatantrah*, 'independently', i.e., irrespectively of the certificate of success to be issued by the investigating authority, *siddhayet*, 'tries to secure', i.e., succeeds to himself; *yaścha*, 'he also', who when challenged for an inquiry, *nishpatet*, 'absconds', i.e., from the seat of investigation runs away. 10 *Yaścha*, 'he also', *ākṛtaḥ*, 'summoned', does not speak anything, either in support of his side, or detrimental to the other side, *sa*, 'such a one', *hīnah*, 'a false litigant', i.e., a faulty one, and by reason of the offence of executing a claim under a doubt, 'is declared by the Smritis also to be punishable by the king', *rājñā dandyāścha smṛtah*. 15

By the first (use of) *cha*, 'and', are included those who do not attend at the place of inquiry. By the second (use of) *cha*, 'and' is included one who when unable oneself, who does not appear at the trial through a deputy. By the (use of the) third *cha*, 'and' is indicated that he should be compelled to pay what is in dispute. 20

These deformities, moreover, not likely to be proved by any other than one who is a thorough expert, are only means of indication of a disturbance. Otherwise, the possibility of a perturbation may here be taken as conclusive. A decision by regard to these is called among the people a direct<sup>1</sup> deliberation. (16). 25

## Sūlapāṇi

The Author states the characteristics of a defeated party

Yājñavalkya, Verse 16.

If in a claim which is under a doubt one recovers independently of the (prescribed) means; *nishpatet*, 'absconds,' i.e. without informing goes to another village; after he is brought for being questioned, when asked 'what have you to say', speaks nothing whatever—these three as false litigants are to be punished as such. Nāradu<sup>1</sup> however mentions five varieties viz : "One who changes his pleading, one avoiding a trial, one failing to appear, one who does not file an answer, and one 35

1. प्रवृत्तिषाः See the remarks of the Mīlākshmī above on p. 678, l. 1.  
quoted in the note on page 679, प्रवृत्तिषाः.

2. Ch. II. 33.

who absconds after he is summoned, are five varieties of a faulty litigant." "The absconder, after three fortnights; one who keeps silent after seven days; and one avoiding a judicial investigation, after a month, and an incongruous deponent immediately (are declared as 5 vicious or faulty)." 16.

Now, where two men simultaneously go to the officer of justice, each as plaintiff e.g., where, a certain person having obtained land by gift, after enjoying possession of it for some period went out on account of business into another country along with his 10 family; and a certain other person also obtained the same land by a gift and after enjoying possession for some time, went into another country. Thereafter both returned together and there was a quarrel each saying "this is my land, this is my land," and when both go simultaneously to the officer of justice, the question would be 15 on whom should the burden of proof lie? Anticipating this, the Author says:—

### Yâjñavalkya, Verse 17.

When there are witnesses for both sides, those for him who claims priority should be taken first; and if the 20 first claim be invalidated, then those (i.e., the witnesses) of the next claimant should be examined.

Mitâksharâ :—*Ubbayataḥ, for both sides, i.e. for both the litigants. Witnesses, sâkshîshu, i.e., when they are available. The witnesses for him who claims priority, sakshiṇâḥ pûrvavâdinâḥ, should be examined; i.e. ones who say that he got (it) by a gift and had enjoyed at a prior date. A Pûrvawâdi, a person claiming priority, is not one who first makes a complaint. The witnesses for such a one should be examined.*

When, however, another person says:—"True it is that this 30 man first got it by gift and also was in possession, but the king gave this very field to me after purchasing from this very man, or that this man gave it to me after having obtained by gift"—then, the case of the first claimant becomes invalidated as it cannot be proved, and

when the case of the first claimant is invalidated, the witnesses should be examined of him who says that he got

\* Page 14. a gift at a later date and was in possession (since). This explanation<sup>1</sup>—alone is proper. It would

not be proper to put the following interpretation, *viz.*, if the answer is by denial, the witnesses of him who claims priority are examined; while in the answers of *res judicata* and *special plea* if the case of the first claimant be invalidated then would come in the witnesses of the next claimant. The same import having been laid down in the text—'Next, the plaintiff should immediately have written &c.',<sup>2</sup> there would be the fault of repetition.

The first (mode of) explanation has also been brought out clearly by Nārada<sup>3</sup> who after observing—"In the case of a denial, the proof rests on the plaintiff, while in a 'special plea', on the defendant. For establishing a *former judgment* the (production of the) decree would constitute (sufficient) proof," says:—"When two persons quarrel for a point, and both have witnesses, the witnesses of him who sets up a prior claim shall be heard."

This rule has been specially mentioned as it differs from the rules of procedure for suits in general.(17)

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### Viramitrodaya.

"Then the plaintiff should cause to be written the means of proof of the allegations in the plaint", so it has been said. There, when the means of proof exist for both the plaintiff and the defendant, whose should be taken up (first) for consideration? So, the Author states the rule here

Yājñavalkya, Verse 17.

*Ubbayato*, 'of both' i. e. of the plaintiff and also of the defendant, when witnesses and like other means of proof exist, *pūrvarāddinah*, 'of him who filed the plaint,' the witnesses and like other means of proof should be admitted; each is the general rule.

1. *i. e.* taking both as plaintiffs and putting one as यज्ञवल्क्य and another as गृही.

2. Yājñavalkya 7 (2) page 672 above.

3. Ch II. 163.

Here, the Author states an exception : When the first side, i.e. in the form of the plaint, *adharîbhûta*, 'is invalidated,' i.e. is proved to be weakened as compared with the answer, either on account of a stronger reason, or by reason of the plea of *res judicata*, the witnesses, &c., of the respondent happen to be accepted. This moreover has been particularly elaborated before already. (17).

## S'ulapâni

## Yâjñavalkya, Verse 17.

One says, 'mine is this land by (right of) purchase'; another also 10 says 'mine is this land, by (right of) purchase'; thus when the answer of a special plea is equal, and witnesses of equal kind are adduced, the witnesses of the party lodging the plaint are to be accepted, and not of one who sets up a plea of priority.' Such an interpretation is proper as by regard to the text: "In the case of a pledge, a gift or a sale, 15 however, the prior transaction preponderates," there would be the fault of repetition if the first claimant be invalidated by not adducing a stronger reason to an answer, the witnesses of the respondent should be taken. By the use of the word witnesses, are included documents and the like. (17).

## Yâjñavalkya, Verse 18.

If a dispute is accompanied by a wager, then the defeated party should be made to pay a fine and the amount of his wager (to the king), and also the amount in dispute to the judgment-creditor.

25 Mitâksharâ :—Moreover, if a *dispute*, *vivâdo*, i.e. a judicial proceeding, be *sapanaḥ*, accompanied by a *wager*,—staking is (the same thing as) wager; and that which contains this is one accompanied by a wager,—then there, *tatra*, i.e. in that proceeding which contains a wager, the defeated party, *hInam*, who has been described above, the king should make him pay a *fine*, *dandam*, as also the amount of the wager laid by him; and in the (judgment-) creditor the amount in dispute, *dandam*.

1. It appears that S'ulapâni here differs from Mitâksharâ where mere priority in lodging a complaint is not given preference to a prior existing right (see text, p. 13. II: 28-29). दूर्विन् काले मया प्रतिष्ठितमुपस्थिते यो ददाते असी दूर्विन्, न ददातः दूर्विनेत्वात् ।

2. See further Yâju, II. 23.

Similarly where one being under the influence of anger, makes a stipulation thus :—“If I am defeated, I shall pay 100 *panas*”, and the other (side) does not make any stipulation, then also a judicial proceeding is set in motion ; and when it is commenced, and if the person making the stipulation loses, then he himself should be made to pay a fine together with the sum stipulated. The other (party), however, if defeated, should be made to pay the fine, and not the stipulation as the text particularises it (*i. e.* his stipulation) as for one's own.

Where, moreover, one stipulates 100 and the other 50 only, there also in case of a defeat each should be made to pay respectively the amount stipulated by him alone. By the text “if the suit is accompanied by a wager” the Author has indicated (the existence of) a suit without a wager also. (18)

## Viramitrodaya.

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Generally, it is only when the means of proof for both exist that a suit with a wager comes about. By regard to this, the Author mentions the part to be performed by the defeated party in a suit with a wager.

## Yājñavalkya, Verse 18.

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As characterised above if a suit exist, then in a trial with a wager, the investigating officer should compel the defective party who loses, to pay to the king or to the opposing party respectively as the case may be, viz., to the king, the penalty consequent upon the defeat ; to the opponent the amount which was the subject matter of the suit, and his own wager, viz., the subject matter as well as the amount. By (the use of) the word *tu*, ‘however’, in a suit without a wager, is excluded the payment of wager. By the first (use of the word) *eva*, ‘only’ is excluded the payment of the wager laid by the other party and not agreed to by himself. By the second, and accompanied by the expression *dhanins eva*, ‘to the judgment-creditor only’ is excluded the payment of money in cases other than those involving a money claim, such as slander, &c. The first two *cha's* are intended to include the payment of the penalty and the wager which are not payable. The last *cha*, ‘and’ is indicative of payment of all the three together, viz., the penalty, &c. (18).

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S'filapâni  
Yâjñavalkya, Verse 18

"If I am defeated on a footing of equality, then as an additional penalty due for a defeat, I shall pay so many *papas*," thus where the defendant stipulates with extreme boastfulness, that is (known as) a suit with a wager. In such a case, the penalty for a defeated party, as also the wager laid by himself, should be caused to be paid to the king, and also the amount in the suit to the creditor. (18).

Yâjñavalkya, Verse 19.

10 After discarding all circumvention, the king should decide disputes according to the actual facts; for even a real claim (based on actual facts) if not properly presented is likely to be lost in a judicial proceeding.

15 Mitâksharû:—Moreover, chhalam, circumvention, what has been wrongly said; nirasya, after discarding, after throwing off; bhûtena, according to the actual facts, in pursuance of the real state of facts, a king should bring disputes to an end, vyawâhârân nayed. antam nryâh. Since, even a real claim, bhûtamaapi i. e. a true case, anupannyastam, if not properly presented, i. e. if not properly pleaded, is lost, hlyatê, i. e., suffers a defeat in a judicial proceeding, vyawahâratah, at the trial on account of witnesses &c.

25 Therefore the actual facts should be found out. The presiding officer of a Court along with councillors, by gentle persuasion and such other means, should try in such a way that the plaintiff and the defendant would speak the truth only; (for) in that case the decision would be given regardlessly of witnesses &c.

If, however, it is absolutely impossible to find out the real facts, (then) in that case, the second course is that the decision should be given by examining witnesses &c. As has been said:—  
 30 "It (i. e. a legal proceeding) is said to have two courses, as it is capable of being in pursuance of facts, or founded on error. A fact is that which truly embodies the actual events. An error is what has been erroneously deposed to."

There a decision given in pursuance of actual facts is the principal course, that founded upon error is only secondary. In a decision based on (the evidence of) witnesses and documents, the truth may sometimes be followed, sometimes not, as it is possible for witnesses &c. to deviate (from the truth.)

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\*PAGE 15.

### *Viramitrodaya.*

As a suit is regarded two-fold on account of the distinction of being with or without a wager, so also by regard to its being founded on truth, or on error, it is two-fold. For it has been said<sup>1</sup>: "By reason 10 of its being founded on truth or on error, it is said to have two courses. Truth is what is linked with facts; what has been declared by mistake, is error." Thus the word mistake here is merely indicative of a proceeding which is not in pursuance of facts. There, as far as possible, a trial should be observed only in pursuance of facts; so the Author says

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*Yājñavalkya, Verse 19.*

*Bhātēna*, 'according to facts' in connection with the matter in issue by means such as peaceful negotiations &c. by the party speaking as to actual facts in the form of his movements or the actions of the other side by reference to dates, having discarded the statements in the nature of circumventions, *nṛpo nyavahārān nayet*, 'the king should decide disputes,' i. e. carry to their own results in the form of a decision.

20

At times a suit is likely to be decided even in pursuance of an error, so the Author says, *bhātam*, 'actual facts,' i. e. a real fact although with proper connections such as witnesses &c., if not properly set out before the determination of success, in a suit to be managed, *hīyate*, 'suffers a defeat,' becomes impossible of accomplishment. In such a case, the trial will only be in pursuance of an error. By the expression, 'even facts if not properly set out' are included by extension all transactions well known as being in pursuance of facts.

25

'There, a transaction proved according to rules of Sāstra is as under: "One who abandoning a strong ground resorts to a weak one, would not be allowed to resort to it again after the members of the judicial assembly have reached<sup>2</sup> the stage of success". When<sup>3</sup> a law

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1. By Nārada I. 29.

2. अपेक्षयात् i. e. have recorded their decision as to who should succeed.

3. Kātyāyana, Verse 221.

4. Nārada I. 62, 63.

suit has been decided, evidence becomes profitless, unless a document or witnesses can be produced who or which had not been announced at a former stage<sup>1</sup> of the trial. As the (fertilizing) power of rain is thrown away on ripe grain, even so evidence becomes useless when the suit has been decided.”

Popular usage in transactions, such as “If I do not go tomorrow, I am (to be considered as) defeated,” an agreement like this and others. (19).

### Sūlapāni

Yājñavalkya, Verse 19.

“Truth is what rests on true facts. Error rests on a mistake of facts”, vide this text of Nārada<sup>2</sup>, if real facts are clearly ascertained by means of other proofs, then whatever had been declared through error should be given up as not final, and by means of positively ascertained facts, judicial investigations should one conclude; as even actual facts if not put forth in a judicial court lead to a defeat; so Nārada<sup>3</sup>: “What through error is not declared, that even though it were an actual fact is lost at law; therefore, judicial trials should one investigate by regard to actual facts.” “Moreover by the king particularly by one who is anxious to maintain the (integrity of) law, by regard to the diversity of the human mentality, after discriminating the good from the not good”. (19).

“Even a real claim is lost in a judicial proceeding if not properly presented” the Author mentions an illustration of this text

25 Yājñavalkya, Verse 20.

Where the defendant sets up a denial and, it is not confined to one only of the many particulars written in the plaint severally, and the claim is (afterwards) proved in

1. Asahāya has the following note on this: “‘This wicked debtor owes me money, and although this is supported by witnesses and other evidence, he declines to give it. Therefore he must be produced in my presence before the King’s Court.’ If the claimant says so, and does not produce his proof at the time of the evidence, but offers to produce afterwards, it cannot be admitted as evidence. But, if after making the statement, the claimant could not produce it owing to any accident etc., it may be offered, and it shall be accepted although the case had already been decided, and surties were offered and taken.”

2. Nārada L. 20.

3. I. 64.

one particular, he should be compelled by the king to pay the entire claim. He (the plaintiff) should not, however, be allowed to recover (from the defendant) what had not been alleged in the plaint.

Mitākṣhara:—Naikam, *severally*, many particulars, *e. g.* gold, silver, clothes &c.; likhitam, *written*, allegation made by the plaintiff; if the defendant *denies*, nihnuṭo, *i. e.* conceals the whole claim, then, if the *claim is proved*, bhūvitah *i. e.* the defendant is made to admit, the entire claim *i. e.* with regard to silver &c. (also) *as alleged in the plaint should be caused to be paid to the plaintiff by the king, nr̥peṇa.*

*Na grāhyastu aniveditah, should not, however, be allowed to recover what has not been alleged.* What had not been alleged at the time of the first complaint, but afterwards is being informed by the plaintiff saying that it was formerly forgotten, *he should not be allowed to recover, na grāhyah i. e. to be (allowed to be) paid, by the king.*

It must not be supposed, however, that this rule is merely textual<sup>1</sup>; the falsity of the defendant's denial as to one particular having been established, it leads to the possibility of (establishing) its falsity as to other particulars also. Likewise, the truth of the plaintiff's allegations having been established in one particular, it raises the probability of its being true in other particulars also. Thus, from this very text of the Lord of Yogis<sup>2</sup> supported as it is by the rules of Logic which is only<sup>3</sup> another expression for 'the rules of probative reasoning,' the resulting rule (that comes to be established) is that the king should cause the entire claim to be paid.

And when a suit is being decided in pursuance of the rules of logic, even if the real facts stood otherwise, no fault would attach

1. वाचनिकम्—based on a text. *i. e.* its soundness can be established even by the test of logic as will be seen from the next sentence.

2. *i. e.* the sage Yājñavalkya.

3. तर्कापरलापसंनादता

to the judges deciding the suit<sup>1</sup>. As also (says) Gautama<sup>2</sup>, after stating—‘Rules of logic are a means for arriving at a judicial decision. For getting at a decision with (the help of) it (logic), parties should be placed in their proper positions respectively,’ he concludes<sup>3</sup> thus: ‘therefore the king and the preceptor are blameless.’

Moreover it is not that the consequences of a (false) defendant being confronted in one particular extend only<sup>4</sup> to his testimony not being accepted (as a reliable one) because the text is that ‘a party confronted in one particular should be made to pay the whole (claim)

10 by the king.’

The text of Kātyāyana<sup>5</sup>, however, viz. “Even in suits involving several counts, as much amount as the creditor (plaintiff) establishes by means of his witnesses, so much only does he get”, has a reference to (suits for a) paternal<sup>6</sup> debt payable by the sons 15 and others. There the rule is that sons and others in their answers in a suit with reference to several claims saying ‘I do not know’, do not become guilty of pravarication; (and) even if a claim is proved against him in one particular he does not become a false litigant, and so the rule—“where the defendant denies all the particulars &c.” 20 has no application there, as there is no concealment, and therefore no (scope for the application of the) rules of logic. The text of Kātyāyana<sup>7</sup> viz. ‘Even in suits involving several counts &c.’ is a general rule. Putting aside the ‘false answer’ which is the subject of a special treatise, the author treats it as an answer of ignorance.’

1. It may also be thus rendered; Even if it were different from the real facts. ‘परस्तमो अस्यदातेऽपि ।’

2. Chap. II. 23–24.

3. Chap. II. 32.

4. पतनश्च &c. i.e. only thus far, to this extent. It is not that from this text the incapacity would extend to the length of only the party’s case not being accepted. The Author says that it extends further, viz. ‘ज्ञेया सर्वं शूलम् ।’. The meaning is that in the case of false witnesses the only consequence is that their testimony is not accepted; whereas in the case of dishonest litigants, not only that their testimony is not accepted but that they are punished to the extent of the entire claim in dispute being thrown out.

5. Verse 473.

6. निमादिक्षणरिवय् is a better reading and is adopted from Bālambhatti. See Bālambhatti page 24, 1. 18. पुनर्निर्देयप्रियादिक्षणरिवय् ।

It may be said that by the text<sup>1</sup> viz. "In suits for the recovery of debts and the like which are of a quasi-finite character, the amount in disputes being already ascertained, if the allegation is for a less or a greater amount, the claim does not succeed", Kātyāyana has said that in suits containing more points than one, if only one point or more points than one which are involved are proved by witnesses, the whole claim does not succeed. That being so, when only a portion is proved, from whence does follow the proof of the portion that is not proved?

To this the answer is that where witnesses are produced as the means for proving the entire claim alleged in the written plaint, there in case the witnesses deposes to a portion only or to much more than what was claimed then in such a case the whole claim does not succeed; this is the meaning of that text. Even there, from the wording of the text viz. "being ascertained...does not succeed", a doubt would even lie here as before and thus there is scope for other evidence (means of proof), on account of the rule in the text<sup>2</sup> "after discarding all circumvention &c."

In the case of criminal complaints, however, the whole point alleged is considered as established even if only a portion is established by witnesses produced for proving the whole case; because crimes and the like are considered as proved by so much proof, as also on account of the text of Kātyāyana's viz. "In complaints for cohabitation with woman, crime, and theft, what is known as the point at issue is considered as established in its entirety if only a portion of the point in dispute is deposed to by the witnesses." (20).

#### Viramitrodaya.

In the course of an exposition of the function of the king, the Author gives illustrations of trials based on facts, as also those influenced by mistakes

Yājñavalkya, Verses 20.

*Likhitam*, 'written'; in the plaint &c., the written allegations made; *naikam*, 'many', in more than one (particular), such as, gold, gems, clothes; &c., the defendant who *nihnu*, 'denies', i.e., conceals

the entire claim, he, *ekadeśe*, 'in one particular' such as, merely as regards gold or the like, *riddhitah*, 'proved', i.e., by means of witnesses, &c. &c., has been completely proved to have taken, *sarvam*, 'the entire', claim which is the subject matter of the complaint, *nṛpēṇa*, 'by the king', 5 to the plaintiff, *dāpyaḥ*, 'should be compelled to pay'.

This, moreover, in regard to one particular (item) of the plaint which was established, when other particulars have not been proved here as also in the case of a special agreement, that 'if even one particular is proved, I shall pay up the whole.' There, the first has connection with 10 actual facts as may have occurred, the second is based on a subterfuge.

*Aniteditah*, 'not alleged in the plaint', i.e., not set out in writing before. The particle, *tu*, 'however', has the sense of *cha*, 'and'. As to the part other than the one particular in regard to which the claim is proved, such as gems, &c., although not proved should not 15 be ordered by the king to be paid. This also is an example of a trial connected with an error. Vide the text of *Kātyāyana*: "Even when only a portion of the matter alleged has been deposed to by the witnesses, in charges of intercourse with women, heinous offence, and theft, the whole of the matter alleged shall be deemed to be proved." In cases of 20 theft and the like, although proved in one particular, the whole is to be paid; so the *Mitākṣharā*. (20).

### S'ūlapāni

#### Yāñjavalkya, Verse 20.

One, who of the many counts in the written allegations, such as 25 gold, silver, copper &c., denies all, he, when proved as to one particular such as gold &c. all i.e. silver &c., he must pay. If when proved as to one particular, having ascertained the plaintiff's, he says "this other also was forgotten by me", such a one not having been written down at the time of the plaint, should not be admitted, and no royal penalty (20).

30 It may be said "Where the defendant sets up a denial, and the denial is not confined to one of the many particulars" &c. is a *Smṛti* text; so is also "In suits involving several counts &c." a *Smṛti* text. Thus there being a mutual conflict between these two *Smṛtis*, why are they not considered as unauthoritative as they are

opposed to each other? Why resort to (the rule of) adjustment<sup>1</sup>? So the Author says:—

Yājñavalkya, Verse 21 (1).

Where two smṛtis conflict, principles of equity as determined by popular usage shall prevail.

\*PAGE 16.

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Mitiksharā :—Where smṛtyoḥ, between two smṛtis, there is mutual virodhah, conflict, there for the purpose of removing the conflict and determining<sup>2</sup> the matter in issaq nyāya, principles of equity, comprising general rules together with the exceptions, 10 balavān, shall prevail, i.e. (will) have force.

From where should these principles be obtained? so the Author says:—wyawahārataḥ iti, as determined by usage etc., obtained from general usage i. e. ancient usage as observed among the elders and as determined by the two tests of affirmation and negation.<sup>3</sup> Hence even in the present case establishment of the rule is the only proper test. Thus should be applied even to other cases the rule regarding the adjustment and the rule of option.

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1. विषयवस्तु see note 4 farther on pp. 708-709.

2. Note that here विषयवस्तुतारी means विषयवस्तुप्राप्ताय.

3. अन्यत्यन्तरेक—note these two terms, which are likely to recur often and have an important place in the rules of logic and also of interpretation. अन्यत्यन्तरेक predicates a constant and invariable concomitance of the middle term or वृत्त and the major term or सम्बन्ध (हेतुसम्बन्धयोग्यतिसम्बन्धः) The familiar instance of this is:—यज्ञ यज्ञ पूजा: तत्र तत्र यज्ञः। ‘Wherever there is smoke there is fire’—the invariable co-existence of fire with smoke is called in logic the relation of ‘invariable Concomitance’ or अन्यत्यन्तरिक्. Corresponding to and the opposite of the above is what is known as the अन्यत्यन्तरेकात्मि or an assertion of the concomitance of the absence of गृह्णता and the absence of वृत्त e. g. यज्ञ यज्ञ वृद्धिनाशित तत्र तत्र यज्ञोऽप्य नात्मि “Wherever there is no fire, there is no smoke also.” The student will find a fitting comparison with this in the (1) Universal A Proposition of the English Logic e. g. All *x* is *y* and the (2) converted A proposition e. g. All not-*x* is not-*y*, respectively. A cause or वृत्त is said to be connected with its effect by अन्यत्यन्तरेकात्मि when both the affirmative and negative relations between the thing to be proved and the cause that proves can be equally asserted; such a वृत्त alone makes the argument perfectly sound and incapable of refutation. This process of arriving at the Vyāpti or universal proposition corresponds to the methods of agreement and difference in Mill’s Logic. (Apte). The application of this in the context will be seen from the following illustration: The question is whether a particular usage is proved to exist or not. Instances of its affirmation and an entire absence of its negation or non-enforcement would prove the custom under the अन्यत्यन्तरेक texts.

To this general rule the Author mentions an exception

*Yājñavalkya, Verse 21 (2).*

The rule however is that the science of law is stronger than the science of politics.

5      Mitāksharā:—The science of politics e.g. the work of Auṣanasa stands already excluded by the text

An exception ‘in conformity with the principles of legal to the general rule. science’; so the ‘science of politics’ referred to here is the one forming part of and incorporated

10     in the ‘science of law’ and characterised as the science of polity. In the case of a *conflict*, *virodha*, between two smṛtis i. e. from the science of law and the science of politics (respectively), the science of law is stronger than the science of politics; this is the *rule*, *sthitīḥ* (lit.: position) i. e. limit. The meaning is that although in themselves

15     there is no distinction between the science of law and the science of politics as the authors of both are of equal<sup>2</sup> (authority), still the principal subject (of treatment) being law, while politics having only a subordinate position, the science of law has force. The importance of *Dharma* has already been demonstrated before in the beginning of

20     this treatise<sup>3</sup>. Therefore, in the case of a conflict between the *Dharmaśāstra* (science of law) and the *Arthaśāstra* (science of politics), undoubtedly the *Arthaśāstra* will yield; and there is no scope for any rule of adjustment or of option for a *Vishaya-vyavasthā*<sup>4</sup>. (विषयव्यवस्था) or a *Vikalpa* (विकल्प).

1. *Yājñ II. 1 p. 1, II. 13 & 14 above.*

2. Or it may even be translated as, ‘as both are the compositions of the same (author.)’ समानशर्तकद्वयः।

समान—equal, or it may also mean, same. The meaning is that even if the same author lays down two texts, one in the nature of a वृत्त text and the other an अवृत्त text, still having regard to the fact that it is the पर्मिताश which is the प्रधान or principal subject of treatment, the texts pertaining to the पर्मिताश will have force.

3. i. e. in the *Āchāradhyāya*. Introductory chapter I verses 1-9.

4. Note these two terms विषयव्यवस्था and विकल्प.

विकल्प (Vikalpa) means option i. e. the rule of option. विषयव्यवस्था means an adjustment of the several subjects by appropriating each to its proper place.

What<sup>1</sup> is the illustration for this (proposition) ? Not certainly the text of Manu<sup>2</sup> viz.—“One may slay without An Objection. hesitation a desperado<sup>3</sup> who approaches (with a mnrderous intent) whether (he be) a preceptor, a child or an aged man, or a Brāhmaṇa deeply versed in the Vedas (351). By killing a desperado (intent on doing harm), the slayer incurs no guilt, whether (he does it) publicly or in secret ; (for in such a case) fury recoils npon fury<sup>4</sup>. (352). Also, “One should (certainly) kill on the field of battle a desperado who approaches with an intent to kill, even though he were a special scholer of the Vedas, and thereby he does not incur the sin of a Brāhmaṇa-killer” and similar others are the *Arthasāstra* texts.<sup>5</sup> “This expiation has been prescribed for unintentionally killing a Brāhmaṇa ; but for intentionally slaying a Brāhmaṇa no atonement is ordained,” and

According to Sanskrit writers if there be a direct and clear conflict between two texts, both lose their binding character, and one is left to accept either at his option. There is also another course which is resorted to and that is by assigning the affirmative (वाच्य) and negative (अवाच्य) clauses to their proper and appropriate places and thus removing the conflict. An example will make this clear. “A Brāhmaṇa *may* eat flesh.” This conflicts with the general prohibition of flesh against Brāhmaṇas. Then follows the appropriation (विशेषवस्तु) viz. “a northern Brāhmaṇa *may* eat flesh—a Southerner *must not*.” The reader will note the two texts, an apparent conflict between which has introduced Verse 21.

A very good instance of विकल्प and विशेषवस्तु may be found in Yājñ II. 277 “शत्रुघ्नापते गृहस्थ पातने चोत्तमो दमः । उत्तमो नामप्यमो चाऽप्येषु पुरुषाश्रितमाणे” Commenting upon this विज्ञानेश्वर says पुरुषस्थ द्वियाम धर्माणेषु शीलादारदेवयोत्तमो चा विविधाणो वेदितव्यः । and this is further made clear by विशेषवस्तु in the सुबोधिते thus—शीलाचारवतः पुरुषस्थ तथा द्वियाम मारणे उत्तमाहस एव दंडः । शीलाचारहिताद्यात्म मारणे पूर्वमाहस एवेति विकल्पवस्तु ज्ञेया ।

It will thus be noted that either of these have a scope when there is a conflict. The Author here says that there is no room for resorting to either as there is no conflict at all.

1. From this clause down to p. 711, line 17 is stated the objection ; or the विवेद्य. 2. Ch. VIII. 351.-352.

3. आत्मादित् This word has been translated as ‘an assassin’ in the Sacred Books of the East, but having regard to its wide connotation a desperado would be a proper rendering.

4. Note the gloss of Kullūka. यस्माद्दनुगते भन्तुः कोपाभिमानिभी देवता हन्यमनगतं कोपं विवर्यते : i. e. the violence of the assailant generates and fosters the fury of the person attacked.

5. Manu. XI. 89.

such others are *Dharmas'astrā* texts; and it is proper in the case of a conflict between the two, that the *Dharmas'astrā* should have force, (since), these two (kinds of) texts not being likely to be in (reference to) one subject, there would be no conflict, and the consideration of their force or weakness does not arise.

Moreover, premising with the text<sup>1</sup> viz. "the twice-born may take up arms where the law is being flouted &c." and proceeding with the text<sup>2</sup> "in their own defence and in the defence of the *dakṣinā*, in a battle-field, and in the protection of women and Brāhmaṇas; he who kills within the limits laid down by law, incurs no guilt."  
 15 one is not amenable to the punishment for slaying in a fair fight an assailant as also one who is intent upon killing women or Brāhmaṇas (while engaged) in self-defence or in the defence of the *dakṣinā*—wealth collected for distribution among the Brāhmaṇas assembled at a sacrifice—and (other) utensils used for a sacrifice, the text viz. one may etc. a preceptor, or a child or an aged man<sup>3</sup> etc. has been given as an explanatory<sup>4</sup> affirmation of the same<sup>5</sup>. Implying thereby that one may kill even the preceptor and others who are absolutely immune from being killed, when they attack with a murderous intent,  
 20 what then of others? From the use of the words *wat*<sup>6</sup> (or), and also of *api* (even) in (the text) "even though he were a special scholar of the *Vedas*" &c., the inference is not (intended to be) suggested that the preceptor and others should be killed, as also from the text of Sumantra viz. "There is no guilt in killing an assailant (with a  
 25 murderous intent) excepting (when it is) a cow or a Brāhmaṇa," and also according to the text of *Manu*<sup>7</sup> viz. "Let him not injure the preceptor, nor him who expounds the *Vedas*, nor the mother or the father; nor also the Brāhmaṇas, cows nor an ascetic." This text is used with a purpose (lit. meaning), inasmuch as it is intended to prohibit the killing of the preceptor and others (when they approach) as assassins, and not otherwise, as the prohibition of murder is

1. *Manu*. VIII. 349.

2. *Manu*. VIII. 350.

3. *Manu*. VIII. 351.

4. अप्यतद्.

5. i. e. Chap. VIII. 349-350.

6. In *Manu*. VIII. 350 (See above).

7. See above p. 709 1, 5

8. *Ob.* IV. 163.

general is already deducible from the general principles (of law). Even the text<sup>1</sup> "by killing a desperado the slayer incurs no guilt" is intended to apply to others than Brāhmaṇas. Since, (by the text) "an incendiary, a prisoner, one armed with a deadly weapon, a robber and one who causes the deprivation of land, wife, and wealth, these six are (known Ātālyinas) desperados or felons" and also "one who is armed with a sword, poison, and fire, who is ready to utter a curse with hand uplifted, who kills by means of A'harvanya charms, who is a traitor to the King, who violates a married woman, who is ever ready to prick a hole (wherever found) one should know these and all such others as desperados or felons (Ātālyinah)," the Ātālyinas have been indicated generally. Therefore the result is, that when Brāhmaṇas and also others are killed as assailants by inadvertence while being warded off by one acting in self-defence and having no intent to murder, in such a case a light expiation will be (sufficient) and no punishment from the King (will be necessary). Therefore another illustration should be cited here.

(To the above objection) the answer is: "As acquisition of a friend is superior to the acquisitions of gold or

\* PAGE 17 land, so one should endeavour for his acquisition"

An Answer is an *Arthasāstra* text. "In conformity with the principles of legal science, and divested of

anger and avarice" is a *Dharmasāstra* text. There occurs a conflict of these two in some cases. As e. g. in a suit where the procedure

is of a fourfold character; if success is secured to one party, acquisition of a friend would be made, but the *Dharmasāstra* would not be followed; while if success is secured to another party, the

*Dharmasāstra* would be followed; but (it) would prejudice the acquisition of a friend, in such a case the *Dharmasāstra* has more force than *Arthasāstra*. Hence A'pastamba has shown the

importance of expiation in the text<sup>2</sup>. "This very same (penance is ordained) for him who when his *Dharma* (duty) and *Artha* (gain) come into conflict, chooses the *Artha*." By the expression "This

very same" the twelve years' expiation<sup>3</sup> is intended.

1. Manu. VIII. 352.

2. I. 9. 24, 23.

3. See Āpastamba I. 9, 24, 20.

## Viramitrodaya

Indeed, when there is a conflict between two *S'āstra* texts, how is a suit based on facts to be disposed of? So the Author says

## Yājñavalkya, Verse 21.

5      *Vyavahārato*, ‘as determined by usage’, in the matter of a point in a law-suit, *Smṛtyoh*, ‘between two *Smṛtis*’, i.e., two texts of *Dharma sāstra*, when there is a mutual ‘conflict’ *virodhe*, *tu*, ‘indeed’, *nyāyah*, ‘principles of equity’, i.e., the principles of logic helpful in effecting an adjustment of the points at issue, *balavān*, ‘shall prevail’, i.e., shall determine. In short, whichever *Smṛti* is adjustable in a particular topic according to logical principles in that matter, that *Smṛti* is authoritative. By the word *tu*, ‘however’, has been excluded the power of *Smṛti*, when in conflict with *S'ruti*. As has been said<sup>1</sup>: “When there is a conflict between a *S'ruti* text and a *Smṛti* text, *S'ruti* alone preponderates. On a conflict mutually *inter se*, however, what is in accordance with equity is authoritative.”

The use of the word *Smṛtyoh*, ‘between two *Smṛtis*’, is indicative of the texts of the same category. Therefore it should be understood that where between two *S'ruti* texts only or two *Artha sāstra* texts only 20 there is a mutual difference, principles of logical reason are decisive.

By the use of the word *tu*, a second time, are excluded the *Purāṇas*. By this, when compared with the *Purāṇas*, the *Dharma-Sāstra* incorporating the *Smṛtis* is not (more) powerful. On the other hand, as with two *Smṛtis*, when there is a conflict mutually between a *Smṛti* text 25 and a *Purāṇa* text, the greater or less power or weakness is determined by regard to the principles of logic, which are helpful in securing the subject of the plaint. (21).

## S'ālapāpi

## Yājñavalkya, Verse 21.

30      When a conflict arises between two *Dharma Sāstra* texts, the suit should be decided by following the maxim of “the general rule and the exception.” Thus: “He<sup>2</sup> who enjoys without a lawful title, as by his father and three prior ancestors, the property cannot be taken away from him because it has descended through three lines of ancestors,” and 35 “He<sup>2</sup> who enjoys without title for ever so many hundred years, the ruler

1. See Nārada Ch. I, 91.

2. Nārada Ch. I, 87.

of the land should inflict on that sinful man the punishment ordained for a thief", of these two texts, one of *Dharmaśâstra*, and another of *Arthaśâstra*, when there is a conflict, the *Dharmaśâstra* text propounding proprietorship by a successive enjoyment for three generations (although) without a title, has force. It is in conflict with the *Dharmaśâstra* text laying down a punishment for possession without title even though for one hundred years. So Nârada: "Where there is a conflict between a *Dharmaśâstra* text and an *Arthaśâstra* text, giving up the *Arthaśâstra* text, one should act up to what is stated in the *Dharmaśâstra*". (21)

5

10

It has been said above<sup>2</sup> that "Next, the plaintiff should immediately have written down the evidence by means of which the matter in dispute is to be established". What are those means? anticipating this the Author says:—

## Yājñavalkya, Verse 22.

15

Evidence has been stated to consist of a writing, possession, and witnesses. In the absence of any of these, the ordeal is said to be another (means of evidence).

Mitâksharâ:—That by (means of) which a thing is measured or discriminated is *pramâṇa*, *evidence*. That, moreover, is twofold, viz. human and divine. Of these mânavam, *human* evidence is (of a) threefold (character) viz. *likhitam*, *bhuktih*, *sâkshinah*, *writing*, *possession* and *witnesses*; so it has been laid down, *kirtitam*, by learned sages. Then (again), writings are of two kinds. A *Sûsana*, *royal grant*, and *Chirakam*, a scroll or *deed*. A Royal grant has been defined before<sup>3</sup>. A scroll or deed (is as) will be defined (hereafter)<sup>4</sup>. *Bhuktih*, *possession*, means enjoyment by (actual) occupation. *Sâkshinah*, *witnesses*, i. e., of the character and kinds to be described hereafter<sup>5</sup>.

20

25

25

1. Ch. 39.

2. Yâjñ. II.7 (English Tr. p 672, lines 14-16 above).

3. Yâjñ. I. 318. p. 530.

4. Yâjñ. II. 84.

5. i. e., in Section V, "Of the Witnesses."

It may be said that a writing and witnesses may properly be accepted as evidence as they may be included in the four kinds in the *śabda*<sup>1</sup> mode of proof (*Pramāṇa*), as they serve as a medium i. e. of expressing (the meaning of) words.<sup>2</sup> But how can possession be a mode of proof? To that the answer is that even possession when satisfying certain (specified) conditions will invariably and correctly measure the probative value of the sale and other transactions which are (set up as) the basis of ownership, and assist an inference (to be drawn), or in the absence of a direct inference, a conclusion may be drawn by implication, and thus it (i. e. possession) may be included either in an inference (*Anumāna*) or an implication (*Arthāpatti*) and be a (good) means of proof.

In the absence of any of all these three (modes of proof) viz : writing &c., the author has mentioned<sup>3</sup> the evidentiary value of any of the ordeals, the character and kinds of which will presently be described, subject to the conditions as to the kind, country, time and the (particular) thing. That ordeals are (to be accepted as) a mode of proof only in the absence of human evidence is inferable from this very text, as the nature and conclusiveness of ordeals are derived from traditional lore, i.e., *Āgama-Texts*. Hence where two persons simultaneously go to an officer of law in reference to a matter in dispute between them, and one adduces human evidence, while the other resorts to the divine test, in such a case the human evidence alone should be accepted. To the same effect is Kūtyāyana<sup>4</sup>:—"If one (party) sets up human evidence and the other resorts to the divine test, in such a case the King should accept the human evidence and not the divine test". Even so where human evidence is available for establishing (only) a portion of the principal point (at issue), even there the divine test should not be resorted to. Thus, in a suit where the complaint is that 'having received a hundred at this rate, the defendant does not pay it back' and upon a denial (of the claim by the defendant) there

1. One of the several *Pramāṇas*. The *Naiyāyiks* recognise only four viz. प्रश्न, अनुमान, उपरात् and शब्द. The *Vedantins* and the *Mimāmeśakas* add two more viz. अनुपत्ति and अपीयानि, while the *Sāṅkhyas* admit only three viz. प्रश्न, अनुमान and शब्द.

2. शब्दप्रियकृतः = शब्दसंज्ञा विषयतः &c.

3. I. e. in the principal verse of *Yājñavalkya*.

4. Verse, 218.

are witnesses for (establishing) the acceptance of the loan, but not for the (particular) amount or the rate of interest, and the plaintiff offers to prove his case by an ordeal, in such a case, insasmuch as under the rule<sup>1</sup> (of procedure), viz., 'regarding proof of a particular portion only,' the particular proof about the amount and rate of interest follows (by implication), there is no scope for an ordeal. As has been observed by Kātyāyana<sup>2</sup>:—"Even if the human evidence offered by the contending parties cover only a portion of the subject-matter, it should be accepted, and not the divine test even if it (i.e., the divine test) be sufficient to cover the whole suit." As for the rule.—"The trial of secret offenders must (necessarily) be by means of ordeals", even this (test) is intended to govern those cases where human testimony is unavailable. As to what has been said by Nārada<sup>3</sup> viz. "(Where a transaction has taken place) in a forest, in a solitary place,<sup>4</sup> at night, or in the interior of a house, and in cases of heinous offences or of denial of a deposit, a divine test is permissible"; even that is (applicable) when human evidence is absolutely impossible (to be adduced). Therefore the general rule (that, naturally follows) is that a trial by ordeal is allowable only where human evidence does not exist.

An exception to this, however, has to be noticed<sup>5</sup> viz. "In trials concerning heinous offences of a long<sup>6</sup> standing or in the case of assaults or slander or concerning acts proceeding from violence, the ordeals itself are the witnesses."

Moreover a similar rule is found in some places about s

writing, etc. As in 'determining rules laid

\* Page 18. down for pūgas,<sup>7</sup> the S'reyas, and Gāyas and other trades, the evidence (to be adduced) is

1. एकदेशविनिःयाः: also called एकदेशविनिःयाः as e. g. याक्षर्णुद्देश का हिते ये मध्यनि याथो न गृह्णः इति। See the प्राचाराय on the ब्रह्म शास्त्रदेशोल्लिखणो 1. I. 56 Cf. the rule of 'Part for the whole' 2. Verse 210. 3. II. 80.

4. Dr. Jolly takes निजन् as an adjective of अरुप and translates "in a solitary forest", but see the gloss of Ārahyā on this:—"अप्येवनमेव एतां वा विजितपदेशो!" 5. Kātyāna, Verse 220.

6. Or it may also be interpreted as 'in protracted proceedings, in trials of heinous offences &c. the वाक्यापद् and साक्षापद् being taken separately. Cited as of Bhāskari in V. Mayakha, see, p.11, l. 14.

7. गृ and अग्नी, See Yājū. II. 30 and Mitākṣhara where Vijūneśwara thus defines.—याः—समुद्देशः । भिज्ञातीत्वा भिज्ञातीत्वामेव यात्रिविनो संधाताः । अग्नी—नानाजातीत्वामेव जातीत्वामयेकजातीत्वामेव यात्रिविनो संधाताः ।

writing and not an ordeal or witnesses'.<sup>1</sup>" Similarly<sup>2</sup>—"In suits regarding the right of door or way, or the right of erecting or making these, as also in suits regarding the enjoyment of a surface or watercourse, the most important (means of) proof is that of possession; and neither an ordeal nor the witnesses." So also<sup>3</sup>—"In suits regarding valid and invalid gifts, in disputes between a master and his servants, in cases of rescission of (the contract of) sale, and also where after purchasing a thing one does not wish to pay the price, in disputes (arising out) of gambling (with dice) and betting (with animals), wherever a dispute arises in any of these cases, witnesses have been prescribed as the means of proof, and not an ordeal or a writing."

### Viramitrodaya

As if distributing the relative strength or weakness of human and divine evidence as means of proof, the Author proceeds

#### Yâjñavalkya, Versa 22.

*Likhita*, 'a document', i.e. a writing capable of helping the determination of the point in dispute; *bhuktib*, 'possession', i.e., the occupation of the village, &c., the subject-matter of the dispute; *sakshina*, 'witnesses', as the Author will describe hereafter.

By the use of the word *cha*, 'and' the Author adds the syllogistic reasoning otherwise known as *Pratyakhalita* as another means (of a decision). Thus fourfold means of human evidence 'has been laid down', *uchyate*, by scholars, and recommended to be followed. The aforesaid *cha*, follows here also; thereby the oaths are other-worldly means but distinguishable from ordeals as stated by Nâradu<sup>4</sup> is added here also. (22).

### S'filapâgi.

#### Yâjñavalkya, Versa 22.

These three means of proof, in cases of recovery of debts and like others, in the absence of documents &c. of the nine ordeals such as the Balance and the rest, any one is (regarded as) the means. Their strength and weakness are stated by Kâtyâyana.<sup>5</sup> "Divine means of proof is not permitted, when witnesses exist; so also when there is a document, neither ordeals or oaths".

1. Kâtyâyana, Verse 225.

2. Kâtyâyana, Verse 226.

3. " " 227, 228.

4. See Ch. I, 30 and Ch. II, 30.

5. Verse 223.

As possession is determined in the form of an inference, the use of possession is characterised as inferential. So even Bṛhaspati<sup>1</sup>, "Witnesses, documents, and inference, thus human evidence is regarded as three-fold. Divine evidence has been stated to be nine-fold beginning with the Balance and ending with Dharma. But the mention of possession is indicative of greater force than document". (22).

When there is evidence on both sides, and when there exist no circumstances which would help in discriminating the strength or infirmity of either, (a question might arise) how should the strength of several proofs adduced by the plaintiff and defendant be determined? So the Author says

### Yājñavalkya, Verse 23 (1).

In all<sup>2</sup> civil disputes regarding property, evidence adduced in support of a later transaction preponderates.

Mitāksharā :—In disputes for payment of debts, and others in all civil disputes, sarveshu arthaviwādeshu, later transaction, uttarā kriyā—that which is established is a Kriya, i.e., investigation or proof. When the evidence in support of a later transaction is established, and it preponderates, balavati, the party setting it up becomes successful; and (in such a case) even if the allegation in the plaint be established, the party setting it up is defeated. As e.g. where a certain person establishes a loan by proving receipt, while the other party proves its non-existence by repayment, in such a case where the receipt and payment back are (duly) established by (proper) evidence, this (evidence of) payment back has force and the party who sets up repayment succeeds. Similarly, where after first taking (a loan) at two per cent. a party acknowledged

1. Ch. V. 18.

2. अप्पिवाद—This has been rendered by Mr. Mandlik as 'money-disputes.' Having regard, however, to the proper meaning and scope of the expression here, it would not be an accurate translation. An अप्पिवाद is a dispute regarding title to or possession of property and the property may be moveable or immoveable. This has been made clear by the author himself in his gloss on Yājñ. Verse (2) see Sanskrit p. 111. 5. सर्वेषांविवादेय, मःपुक्तेतु'. An अप्पिवाद is used in opposition to a शहस्रमिकोग, पार्वतमिकोग or any such suits the origin of which is in some threat or similar act and not in a substantive claim to property.

(to pay) at three per cent., in such a case even when there is (good) evidence for both the facts, the acknowledgment at three per cent. has force. Because the general rule is that of two contradictory facts unless the prior fact is refuted, the truth of the later one does not become established, as it comes later (in order). It has also been said "a later fact is not established, unless the prior one is refuted."

The Author mentions an exception to this (rule)

Yâjñavalkya, Verse 23 (2).

In the case of a pledge, a gift, and a sale, however,  
10 evidence in support of the prior claim preponderates.

Mitâksharâ :—In (any of) the three suits concerning a pledge and others, proof of a prior claim alone preponderates. It is thus : when a man after mortgaging his only field with one, and after obtaining some loan, again mortgages it with another and obtains  
15 something, in such a case, it (i. e. the field) belongs to the first only and not to the second. So also in the case of gifts and sales.

It may be urged that there being no ownership (left) in the subject-matter of a mortgage, thereafter a second

An Objection. hypothecation does not appear permissible ;  
20 similarly, also the gift or sale of what has been (already) given or sold does not arise at all ; and therefore that this text is (thus) meaningless.

To this the answer is, even when no ownership exists, and still when from ignorance or avarice

The Answer. one has a mortgage made again (over the same subject-matter), in such a case the prior transaction  
25 alone has force. Thus it is proved beyond doubt that this text is based on reason.

#### Viramitrodayn.

By the text<sup>1</sup>: 'When the first claim is invalidated, &c.', it has been stated that when the answer has greater potentiality, the evidence for the defendant is taken. There the potentiality of the answer consists in the greater strength of the evidence as exhibited in the answer, so the Author points out the (element of) strength in the evidence.

1. Yâjn. II. 17. See p. 696 II. 18-20 above.

## Yājñavalkya Verse 23.

Sarveshu, 'in all', viddeshu, 'in disputes', where the subject matter is the recovery of a debt, of the evidence on the two sides, i.e., of the plaintiff and the defendant, set out by them each as the means of securing their points, between the two, that which is of a later period, has greater strength. Thus, where the statement of one is, 'a debt has been taken from me by him and he owes it', and the statement by the other is, 'Yes, indeed was taken, but it was paid off', there the evidence in support of repayment has a greater claim. Similarly, when the first loan was contracted under an agreement of a Kākīpi<sup>1</sup> as the rate of interest, but later on at the rate of a Pāpa, and that has been by some arrangement, in such a case, evidence in proof of the later arrangement has a greater claim. And thus, where money deposited with one has been deposited with another, there it should be understood that the bailment with the latter has greater force.

The word eva, 'however', is to be used as coming after the word uttarā, 'later'. Thershy, an equality of force of the prior one with it has been excluded. Similarly is the word eva in purvāra, 'prior only', is to be explained. In some places, in the plecs of 'in all civil, &c.', the reading is, 'prior in civil, &c.', purvā tu iti.

Here, the Author states an exception; A'dhau, 'in the case of a pledge', i.e., in a transaction of pledge, pratigrāha, 'in the case of a gift', and in the case of a sale also, the prior one of the same kind in each case has a claim in preponderance. The similarity,<sup>2</sup> moreover, consists in the prohibition to dispose of at will, and the destruction of one's ownership. Thus where after a mortgage with one, a mortgage is effected with another, there, the first mortgage is stronger; also, where after an acceptance or purchase by one, another has resorted to acceptance &c. as a means for (acquiring) ownership, there the first acceptance, &c., is more forceful. This is the meaning in substance.

As against a mortgage, a transaction of acceptance as a gift, and the like, being destructive of the right of ownership, whether of a prior or posterior date is indeed stronger. Thus it should be understood that by regard to its being not obstructive of the free right of disposal by the owner as he likes, whether of a prior date or, of a posterior date, a mortgage which is obstructive of the free right of disposal by the owner

1. A quarter of a Pāpa.

2. In a transaction of a pledge, the freedom of disposal of the object of the pledge which remained with the owner before is restrained, and the right of ownership becomes extinct in the other two transactions.

according as he likes is more powerful. This very thing, says, Nārada in Ratnākara: "Having made a deposit with a mortgage with another, where one makes a mortgage, or sale there, the later transaction is more powerful." (23).

5

## Śūlapāni.

## Yajñavalkya, Verse 23

'In all,' i.e. such as the recovery of debts and the like, the later transaction i.e. acceptance of loan &c. is stronger i.e. is entitled to be pursued. One and the same thing, was deposited with one under a loan and taking it from there, it was deposited under a loan with another, there, proof of the later transaction preponderates. In the case of pledges etc. however the prior one is stronger. That which is accepted as a gift is an acceptance (23).

While wishing to establish the evidentiary value of possession  
15 when accompanied by certain qualifying circumstances, the Author proceeds to mention other results which flow from a certain kind of possession

## Yajñavalkya, Verse 24.

Of him who while he sees his land being enjoyed by  
20 another (for twenty years) looks on and does not object,  
the loss of (the right to) land occurs after twenty years;  
of money (the loss takes place) after ten years (under similar circumstances).

Mitāksharā :—Pareṇa, 'by another', i.e. by a stranger,  
25 by one having no connection (whatsoever); bhujyamānām, being enjoyed, i.e. either land or wealth; pasyataḥ abruwataḥ, of one who looks on and does not object; i.e., does not prevent him; e.g. thus—"This is my land; you should not trespass"; of that bhumervimsatīvarṣhiki, of land (thus continuing) for twenty years, hūnirbhavati, occurs a loss, caused by the enjoyment for twenty years without protest. Dhanasya, of wealth, however, (i.e. moveables) such as the elephant, horse etc. the loss occurs dasāvarṣhiki, after ten years.

Indeed this is not proper: Certainly ownership does not become extinct on account of non-protest,

(1) Objection. non-protest not being known either in popular usage or in *S'āstra* as a cause of extinguishing ownership, (just) as a gift or a sale is. Nor is ownership acquired

by possession for twenty years; because possession is not the (means of) proof of ownership; also because (of the rule that) evidence (pramāṇa) does not create the matter to be established (*prameya*)<sup>1</sup> it

(i. e. the *pramāṇa*,) has also not been mentioned among the circumstances giving rise to a title by ownership. For (in the text)

"A man becomes owner by inheritance, purchase, partition, seizure or finding. The additional (mode of acquisition) in the case of a *Brāhmaṇa*, is gift; in the case of a *Kshatriya* gains of conquest, and

in the case of a *Vaiśya* and *S'udra* gains (by labour)", Gautama<sup>2</sup> only mentions these eight as the sources of title by ownership,

(he does) not (mention) possession.

Nor would it be correct to say that this very text demonstrates a twenty years' possession as an originating cause of ownership. A title by ownership or

\* Page 19. (2) Objection. its origin are indicated (even) by general popular 20  
replies, and not (necessarily) by the *S'āstra* alone.

This, however, will be more fully dealt with in the chapter on Partition. The text of Gautama is only intended as (laying down) a rule of limitation.

Moreover, the text<sup>3</sup> viz. "He who enjoys without a title for 25  
ever so many hundred years, the ruler of the

(3) Objection. land should inflict on that sinful man the punishment ordained for a thief." is opposed

1. प्रमेय (Prameya) is that which is to be established; 'the point at issue.' प्रमाण (Pramāṇa) is the means of establishing the point at issue. The meaning in the text is that a *pramāṇa* or evidence can only indicate or prove something which is already in existence; it cannot create it; i. e. a *pramāṇa* cannot be the 'originating cause' of a *prameya*. अनुपादकत्वात्।

2. X. 38-40.

3. See Subodhini, p. 13. I 12. and Bālambhaṭṭa p. 31. II 26-28. on this.

4. Bālambhaṭṭa and others ascribe this text to *Manu*. It is not to be found in the editions of *Manu*. It is, however, found in the Nārada Smṛti. I. 87.

to the theory that possession without title is the source of ownership. Nor also would it be proper to say that the text "He who enjoys without a title &c." is meant to apply to a possession without notice (to the owner), and the text "Pasyatobrurataḥ" &c.<sup>1</sup> to possession with notice (to the owner). The text "he who enjoys without a title" being general in its statement. As Kātyāyana<sup>2</sup> also has said: "One who has forcibly taken away beasts, women, or men should not rest his case on possession (of these) nor his son also"; the rule has thus been established, that moreover an extinction of title is not possible in case of a possession with notice as it is improbable that any cause of an extinction of title would (be suffered to) exist.<sup>3</sup>

Moreover, it should not be supposed that inasmuch as the evidence in support of prior acts preponderates in cases of pledges, gifts, and sales, this (*i. e.* this present) text is intended to lay down by way of an exception the preponderance of the evidence of transactions later in date amounting to twenty years' possession in case of land, and ten years' possession in case of wealth (or moveables). Since in the case of these in reality a transaction itself is not possible, it is only (that which is) one's own (property) that is fit to be pledged, given away, or sold; and there can be no ownership over what has been pledged, given away, or sold. Moreover a penalty has been laid down for a gift and acceptance of that over which he (*i. e.* the giver) does not possess ownership, thus<sup>4</sup>: "He who accepts (as a gift) that which may not be given, as also he who gives it shall both be punished like thieves, and both made to pay the fine ordained for an offence of the highest degree (*Uttama-Sihaṣa*)."<sup>5</sup> Moreover if this verse were to be (accepted as) an exception to [the rule regarding the three

1. *i. e.* Yājñ. II. 24.

2. Verse, 310.

3. The construction here is rather peculiar. The clause समस्तेषु इति etc. in l. 8. is to be taken as part of the objection already commenced and not as a separate objection. The construction here is typically terse—मित्राभासा. The meaning would be fully brought out by the following complete statement of the component parts in their order:—समस्तेषु इति॒र्तंश्च । द्वानिकारणामापात् । An extinction of title is not probable in the case of a possession with notice; because no one would allow any circumstance to exist or continue which would in the end lead to an extinction of title.

4. See Nārada Ch. IV. 12.

(transactions) viz. pledges etc.] the verse next following (i. e. No. 25) does not appear proper as an exception in the cases of *pledges*, *boundaries* etc. Therefore the extinction of (title to) land etc. does not appropriately follow at all. Nor is the cause of action lost. For in the text :—"Of him who neglects and stands by if a period as aforesaid is passed, the suit does not succeed," Nārada has mentioned the extinction of a *remedy* at law when there is laches and such laches is not accompanied by circumstances explaining it; he does not lay down the extinction of the *right* (itself). Similarly in the text "If the owner is neither an idiot<sup>1</sup> nor a minor and if his chattel is enjoyed (by another) before his eyes, the remedy by a suit is lost to him and the (adversa) possessor becomes entitled to the property." even Manu<sup>2</sup> has indicated the loss of remedy only at law and not of the title itself. The loss of the remedy at law would be in this way. The person in possession might say—"This man not being either an idiot, an infant or a minor, I have enjoyed (the property) in his presence without a protest for twenty years and there are several witnesses in (support of) this. If it was (a fact) that I was illegally in possession of his property, then why should he have stood by for so long a time?" and here the (true) owner would have no answer. This even although he would have no answer as (indicated) above, an investigation on facts is still open—vide the rule:<sup>3</sup> "After discarding all circumvention, the King should decide disputes according to actual facts".

It may also be said: "Even though the title is not extinguished, nor (also) is the remedy lost, still there would be the *danger* of the loss of remedy, and in order to avoid this it has been laid down as an advice that one should not stand by.. (To this) however (the answer is that) it is not so; for, possession (which is) within memory cannot be a cause of creating any apprehension as to the loss (of title); (and moreover) if the only object was to lay down the rule that (one) should not stand by, the use of the term *twenty* would be without a purpose.

1. Mark the following text of Nārada distinguishing बाल, वीण्ड, and दिशु. पर्वतसदृशो हेतु आज्ञामाद्यस्तानिश्चित्तः । बाल आपोडमाद्यर्थ्येष्व इति शास्यने ॥ १-११ :

2. Ch. VIII, 148.

3. Yajn. II, 19 Page 700. ll. 10-14 above.

It may next be said that by the use of the word twenty, it is intended to lay down the rule that possession for more than twenty years (in itself) serves as a refutation of all objections regarding the defects or flaws in the document, as says Kātyāyana<sup>1</sup>; "Where possession is enjoyed of property belonging to one who is competent, for (a period of) over twenty years and under a document, that document is (presumed to be) free from (all) defects." Even that is not so; for in that case the rule that after twenty years all objections regarding flaws in a document become barred, having a general application, it would not be possible to set up an exception even in the case of pledges etc.<sup>2</sup> As says Kātyāyana<sup>3</sup>: "If a pledge is actually enjoyed as such for twenty years, it (i. e. the pledge) is proved by that document, (which then becomes) free from all (objections as to) defects." So also<sup>4</sup>, "After a boundary dispute is settled, a document describing the boundaries has been ordained; its defects should be pointed out before twenty years (have elapsed)." By this, the text, viz. "(the loss) of money takes place after ten years" is also refuted. Therefore another meaning should be expounded for this verse.<sup>5</sup>

To this the answer is:<sup>6</sup> Here the loss intended to be indicated is that of the profits (or accession) of the land as

The Answer. well as of the wealth, not of the corpus itself, nor

\* Page 20. of the right of a suit at law. For, even if at law the owner gets (back) the land after twenty

years' possession without protest (by him), still he does not get a right to follow the proceeds, both on account of his own fault in the form of non-protest, as also on account of this text. In the case of a possession without notice, however, he (i.e. the owner) secures

1. Verse, 299.

2. i. e. to say, and thereby the text of Yājñavalkya II. 25 would be meaningless.

3. Verse, 300.

4. Verse, 301.

5. Here ends the objection which began with the words "न विद्यते तु प्राप्तम्" on page 721, l. 1. above.

6. Vijñāneśwara draws the following sāgīt after the above discussion. The reader will note this as a very good instance of a sāgīt of the Sanskrit logic. Vijñāneśwara first gives a literal meaning of the verse at p. 18 ll. 25-27. Then he starts a discussion from p. 18 l. 28 and draws the conclusion or sāgīt on p. 20, ll. 15.

the right to follow the proceeds also, under the text, *Pas'yato &c.* (Yājñ. II. 24), and also in possession with notice and protest, under the text, *Abruvataḥ &c.* (see above p. 720. I. 19-23), before twenty years, he succeeds (even) when there is possession without protest, as the term twenty is used.

It may be objected, thus: Indeed, in that case loss of profits<sup>1</sup> would not follow, inasmuch as the profits arising therefrom possess (the characteristics of) ownership. (To this the answer is), True; it would be so where the accession would remain in the same condition without detriment to its natural state as is the case with beetle and jack fruit trees &c.<sup>2</sup> But, moreover, which arises (as profit) from the land and is perishable by use; in such a case there is loss of ownership as the thing itself has perished. By the text<sup>3</sup>: "He who enjoys without a title even if it is for many hundred years, the ruler of the land should inflict on that sinful man the punishment ordained for a thief," it would follow that assessing in (terms of) an equal money value an amount equal (to the profits) should be made payable as (is done) in the case of a thief; but this conclusion is refuted by the text, "a loss takes place after twenty years." Moreover the punishment from the king still exists even (when the enjoyment is) for more than twenty years on account of a double

1. Mark the word फल (Phala). Its literal meaning is fruit. Here it has to be variously rendered as fruit, profits, proceeds, and accession according as suits the context in each particular case. c/o *Fructus* of the Roman Law.

2. The meaning is that such accessions as remain unaffected even when the fruits have been removed would not fall under the term फल in the sense that the right regarding फल would be lost. In other words, where the accession is itself the फल as in the case of crops, groundnuts &c. there is no third stage between the land and the fruit and in each case there would occur the फलगति. But where the fruits or profits are distinct from and a further addition to things which in themselves are accessions to the land, such things have a permanence of their own and are to be distinguished from the fruits which are perishable and are of a transitory character. Accessions of the former kind do stand without any detriment to their state e. g. mango-tree, though the fruits are taken away the tree, which in itself is distinct from and an accession to the lands, stands unaffected.

3. Nārada. I. 87.

reason *viz.* the possession being without title, and there being no exception stated (to the general rule).

Therefore by reason of the default of the owner in the shape of neglect or laches as also on account of this text, the rule is established that those proceeds are not recovered as are lost for more than twenty years. This also explains the text—"in the case of wealth the loss takes place after ten years." (24).

### S'ulapâni.

Yâjñavalkya, Verse 24.

10 By not raising a dispute when (land) is in the possession of another and with good will is being enjoyed by him, after twenty years the right of ownership becomes lost. That which is covered by twenty years' is twenty years' (possession). Vyâsa states a special rule: "For twenty years, one whose land is enjoyed by others in this 15 world, when a competent ruler exists, the right of ownership of that man cannot be established".

Dhanasya, 'of the wealth' such as of the cow &c., *daśârâshiki hâniḥ* 'the loss occurs after ten years'. Manu: "Whatever (chattel) an owner sees enjoyed by others during ten years, while, though present, he says 20 nothing, that (chattel) he shall not recover". (24).

### Yâjñavalkya Verse 25.

Except in the case of pledges, boundaries, open deposits, wealth belonging to the dull in intellect, the minor, as also in the case of sealed deposits and even in the 25 case of wealth belonging to the kings, women and Brâhmaṇas.

Mitâkshara:—The pledge and a boundary and an open deposit (together make up the compound expression) 'pledges, boundaries and open deposits'; the dull in intellect and the minor 30 (together make up the compound) 'the dull in intellect and the minor.' Their wealth (is) "the wealth of the dull in intellect and the minor", "pledges, boundaries and open deposits" and "the wealth of the dull in intellect and the minor" (make up the compound expression) *âdhîsimopanikshepa-jadabâla-dhanâni*,

pledges, boundaries, open deposits and the wealth of the dull in intellect and the minor; tairvīnā, excepting these.

Upanikshepo, *an open deposit*, is wealth placed for safe custody in another's hand after exhibiting the quality and the quantity. As says Nārada<sup>1</sup>: "Where a man entrusts any property of his own to another in confidence and without suspicion, it is called by the learned a deposit—a (separate) title of law." Placing near is (called) upanidhiḥ, *deposit*.

In the case of a pledge &c. no loss (of title) occurs of land even after twenty years, or of wealth after ten years, even when the owner looks on and does not protest; because (in that case) that<sup>2</sup> kind of default of a party is wanting, and also inasmuch as in each such case exist circumstances which explain the (apparent) delay.

Moreover the possession of a pledge is held with the condition of the pledge attached to it, and thus there is no default by a party even if there is delay.<sup>3</sup> A delay is permissible in the case of (disputes regarding) boundary as it is easy of proof on account of the marks made permanent by (the spreading of) husk,<sup>4</sup> fire etc. In the case of open and ordinary deposits, use and enjoyment (of the subject-matter) is prohibited; and where such possession is in transgression of the prohibition, the neglect or delay is explained as the party gets the property with interest and profits; in the case of the 'dull in intellect and the minors,' delay is very justifiable on account of the dullness and the minority; in the case of the king, on account of his absorption in various duties; in the case of women, on account of ignorance as well as immaturity (of intellect) or unskilfulness. As for a learned Brāhmaṇa delay is proper, as he is engrossed in studying

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1. Ch. II. V. I.

2. *That kind of default* नपातिपद्य i.e. of the kind which would bring about a loss of title.

3. i.e. even if the suit is not brought within the period ordinarily assigned for suits, of that nature. अवृत्त means—not bringing an action—laches.

4. गृ—(tusha) is the husk of paddy. It, among other things, is interred into a pit dug deep and covered over by the earth. The marks created in this way acquire a permanence which is not lost and serve as good evidence in deciding boundary disputes; see further on Yājñ's II, 151 Vijñāneśvar's comments.

and teaching (the Vedas), and in thinking over their import and bringing it into practice.

Therefore in the case of pledges etc; there being a (proper) reason for (explaining) delay in all cases, no loss of profits ever occurs (even) when there is possession with notice and without protest.

### Viramitrodaya.

Means of evidence have been stated, such as documents, &c. There inferential evidence has been expounded; that consisting of witnesses will be stated later on; and in the manner of the rule<sup>1</sup> 'of the needle and the kettle', the Author expounds possession as a means of evidence, in six verses

### Yājñavalkya Verses, 24, 25

Without a mortgage or a similar other transaction in regard to one's own, even while one is looking on, and not asserting that 'this land is mine' and thus not protesting against the possessor of one's land, being occupied 'by another,' parenz, i. e. by one other than oneself, 'for a period of twenty years,' *cintātvarshīti*, i. e. by a continuous possession, the loss occurs.

Of one's i. e. of one's ownership of the moveables such as the cow &c., which is held in possession, the loss occurs after ten years. This is the special point (of difference), *Hāniḥ*, 'loss' i. e. destruction. (24).

*Ādhīḥ*, 'pledge' i. e. an encumbrance; *śimḍ*, 'boundary,' i. e. the boundary of a village &c.; *upanikṣipāḥ*, 'an open deposit,' i. e. an article made over to another after ascertaining its quality &c., *jādasya*, 'of the dull in intellect,' *bd̄asya*, 'of a minor,' or of an adolescent below sixteen years in age; *dhanam*, 'property,' such as the cow, land &c.

*Upnidheḥ*, 'of a deposit,' i. e. of property placed in a vessel without being measured out; and the properties relating to the king, a woman, and a learned man. By the use of the word, *api*, 'also,' the Author includes properties mentioned by Brhaspati<sup>2</sup> viz.: "Such

? 1. दृचिकटाहस्याद्—'The maxim of the needle and the kettle'. It is used to denote, that when two things, one easy and another difficult, are intended to be done that which is easier should be first attended to, as when one has to prepare a needle and a kettle, one should take up the needle first, as it is easier as compared with the preparation of a kettle.

2. Oh. IX. 12.

wealth as is possessed by a son-in-law, a learned Brāhmaṇa, or by the king or his ministers, does not become their property as owners, even after a long period of time." (25).

## Śūlapāni.

## Yājñavalkya, Verse 25.

*Upanikṣhepaḥ*, 'a deposit', placed in a vessel, without mentioning (the details) and with a seal, what is deposited, thus stated by Nārada<sup>1</sup>. *Jadah*, 'a dullard', one dull in intellect; *bālah*, 'a minor', i. e. one who has not reached the age of sixteen; *upanidhiḥ*, 'a bailment'; what is made over for use out of affection, *striyah*, 'women' e. g. female servants and the like. Excepting these, in other properties, after the prescribed period of occupation, the right of the owner becomes extinct. These do not become the property of the person in possession.

Brhaspati<sup>2</sup> mentions another rule also: "Such wealth as is possessed by a son-in-law, a learned Brāhmaṇa, or by the king or his ministers, does not become their property even after a long period of time". "Of the weak, indolent, those afflicted with a disease, the terrified and the travellers, property which belongs to them under a Śīsana grant, cannot be taken away by possession, even if possessed". *Śīsānūrdha*, 'entered in a Śīsana grant' i. e. engrossed on a copper plate or the like. (25).

The Author mentions a rule imposing special penalty in cases of pledges &c.

## Yājñavalkya, Verse 26.

A trespasser upon pledges etc. should be made to pay the principal amount to the owner, and also to the king a fine of equal amount or according to (his) capacity.

Mitāksharā.—*Of pledges &c.*, *ādhyādinam* i. e. (the text extending) as far as the wealth of 'learned Brāhmaṇas' (in verse 25 above); *trespasser*, one who bases his title upon the strength of long-continued possession *dhanam*, *the amount*, i.e. that *principal amount* the subject of dispute.

Here the clause *dāpayet*, *should be made to pay*, *dāyam* *cha tatsamām*, to the owner, is an *Anuvāda*<sup>3</sup> and the clause as

1. Here according to Śūlapāni an *Upanikṣhepa* is a sealed deposit, while the Mitāksharā and the Virāmitrodaya interpret it as an open deposit.

2. Ch. IX. 12.

3. A *Vidhi* is the principal statement and an *anuvāda* is only an explanatory repetition of a *Vidhi*; उद्देश्य or अनुवाद is also sometime referred to as प्राप्ति, and विषेध as अप्राप्ति e. g. प्राप्तिविषेधकम्.

The meaning is that payment of a fine, the imposition of a penalty is the principal thing, while restitution or compensation to the owner is only a subordinate one.

The words उद्देश्य and विषेध require a special notice. उद्देश्य is the subject of an assertion; it is otherwise called अनुवाद, an explanatory repetition

also a fine equal to it, i. e. equal to the amount in dispute should he made to pay to the king, is the *Vidhi*. Although a fine of an equal amount is not in the case of a house, lands &c, still the penalty mentioned further on (Yājñ. II. 155) viz.

5 \* Page 21. 'For destroying boundary marks, and for encroaching beyond &c.' should be adopted.

If perhaps, the trespasser, on account of his immense riches is not (likely to be sufficiently) punished by a fine equal in amount to the principal, then he should be made to pay an amount according 10 to his capacity—(i. e.) so much should be caused to be paid, by as much as his arrogance would be tamed down. For in the text<sup>1</sup> :— “They declare that the word *danyā* is derived from *damana* (taming down or restraining); therefore he (the king) should restrain the unrestrained.” the word *danyā* is used in the sense of restraining 15 or taming down. He, however, who does not possess wealth even equal in amount to the principal, should be made to pay only so much as would (serve to) punish him. He, moreover, who has no money whatever, should be punished by the (several modes of punishment such as) *dhigdanya* and others. For Manu also says<sup>2</sup> : 20 “He should punish first with the expression (*dhik*) fy I or shame! then by (a harsh) reproof; thirdly by a fine (in money), and after that, by the punishment or chastisement.”

The punishment or chastisement of the body has been indicated to be tenfold in the case of persons excepting 25 Brāhmaṇas. So says Manu<sup>3</sup> “Manu, born of the Self-existent has mentioned, in the case of the three (lower) varṇas (orders) ten places for (inflicting) punishment; but a Brāhmaṇa shall go unhurt (from the country); (the ten places are) the organ, the belly, the

of, or reference to, what is already mentioned; ज्ञात् is the fact, or the quality asserted of the subject; it is otherwise called the predicate, and is to be proved or established. The ज्ञात् is already known or assumed as established; while the ज्ञात् is that to establish the connection of which with the ज्ञात् is the object of the proposition. To take an illustration: “Devadatta is wise.” Here Devadatta is the ज्ञात् or the subject, and being already known or assumed as established is from another point of view also an ज्ञात्; but “wisdom” is that which is to be established with reference to Devadatta, and is therefore the ज्ञात्.

1. of Gautama X. 28. 2. Ch. VIII. 120. 3. Ch. VIII. 124—125.

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tongue, the two hands, the two feet, the eye, the nose, the two ears, the wealth, and also the (whole) body." It should be observed that the punishment should be administered only to such parts of the body as the organ &c. by means of which an offence has been committed; or (he) should be made to serve on labour, or he consigned to a prison-house. As has been said by Kātyāyana<sup>1</sup>; "If it is found that he is unable to make the payment of money, he should be made to work under his orders; if unable, he should be consigned to a prison-house; excepting (in the case of) a Brāhmaṇa". In the case of a Brāhmaṇa, however, in the absence of money, prevention of the act, etc.<sup>2</sup> should be ordered; as says Gautama<sup>3</sup>: "Preventing (a repetition of) the deed, publicly proclaiming his crime, banishment, and branding (are the punishments for a Brāhmaṇa) and he (i.e. the king) who does not do his duty (by inflicting punishment) &c."<sup>4</sup> Nārada<sup>5</sup> also after laying down the law viz. "Corporal punishment, confiscation of entire property, banishment<sup>6</sup> from the town and branding, as well as amputation of the (guilty) limb are (declared to be) the punishments for Sāhasa of the highest degree; this law of punishment is ordained for all (castes) indiscriminately," has said,<sup>7</sup> "Excepting (only) corporal punishment in the case of a Brāhmaṇa. A Brāhmaṇa must not be subjected to corporal punishment. Shaving of the head, banishment from the town, branding on the forehead with a mark of the crime of which he has been convicted, and expulsion after parading on an ass shall be his punishments." The rule for branding has (there) been laid down (thus)—"For violating a Guru's bed (the mark of) a female part shall be impressed; for drinking liquor, the sign of a tavern; for theft, a dog's foot; and for murdering a Brāhmaṇa headless corpse."<sup>8</sup> As for the text<sup>9</sup> of Āpastamba, viz. "In the case of a Brāhmaṇa, his eye-sight should be blocked," the meaning thereof is that at

1. Verse, 479.

2. XII. 47.

3. The text given here is not complete. The full text of गोत्तु विद्युत्तु प्राप्तिर्थी च: i.e. the king who does not do his duty in this way makes himself liable for a penance.

4. Ch. XIV. 8. 9.

5. वर् is used here in the sense of वन्—send into exile.

6. Ch. XIV. 9, 10.

7. Manu. IX. 237.

8. II. 10. 27, 17.

the time of baoishiog a Brâhmaṇa from the towo his eye-sight should be blocked by meaos of a cloth, etc., and not that his eyes should be pulled out. For otherwise there would be a cootradictioo with the texts of Manu and Gautama, viz., "a Brâhmaṇa should 5 be exiled unhurt" "a corporal punishment is not (laid down) for a Brâhmaṇa." So enough of prolixity.

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### Viramitrodaya.

In the case a pledge and other kinds mentioned above, by reason of the force of possession, not only of the person in possession is there 10 no title by ownership established, but on the other hand, for one who takes it away by the force of enjoyment, there is even punishment; so the Author says

### Yajñavalkya, Verse 26.

*Adhyâdindm*, 'of pledges &c.' particularly as owner, *kardram*, 15 'trespasser,' one who appropriates it at his pleasure, *dhanine*, 'in the owner's i. e. to the owner of the property pledged, *dhanam*, 'the property' in the form of the pledge which is the subject of dispute, *dpayet*, 'should cause to be paid,' the inquiring officer.

*Tatsamam*, 'equal to that,' i. e. in species or by the value, equal 20 to the pledged article, or in accordance with the capacity of the trespasser: if he has moderate wealth, less than that, and if possessing more wealth, even larger than that, a 'penalty,' *dandam*, should be caused to be paid to the king.

By the use of the word *ch*, 'and,' is added the banishment 25 &c. of one who has not even ordinary wealth. The collection of indeclinables such as *atha*, *api*, and *ucc* is indicative of option. (26).

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### S'ulapani.

### Yajñavalkya, Verse 26.

One taking away the wealth of the owner by means of a pledge &c. 30 the Royal officer should compel to be restored to the owner. A fine equal in amount to it. In the case of an incapacity to pay a fine to that extent, even a small amount. (26).

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It has been laid down that possession is evidence of title of ownership wherever possession is an invariable accompaniment of ownership. As, however, every kind of possession is not necessarily coupled with ownership, it may be asked, what kind of possession (is it that) is evidence? So the Author says

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## Yâjñavalkya, Verse 27 (1).

Title is superior to possession excepting where it (*i.e.*, possession) has descended from a line of ancestors.

Mitâksharâ :—The origin of ownership, such as gift, purchase &c., is (called) A'gama, *title*. It is more powerful than even possession, inasmuch as possession as an index of ownership, is dependent upon title. As says Nârada<sup>1</sup> “After (establishing) a clear title, possession obtains an evidentiary value. Possession without a title which is not clear does not make (any) evidence (of ownership).”

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Nor, moreover, can it be said that the title to ownership can be obtained from mere possession, as it is likely that property which belongs even to others may be enjoyed by trespass &c. Hence also has it been said<sup>2</sup>: “He who pleads possession, only and no title of any sort, should be considered as a thief in consequence of his pleading such illegitimate possession.” Therefore the conclusion is that only that possession which is coupled with the five characteristics, *viz.*: that it is with title, long-continued, uninterrupted, without a protest, and with notice to the opponent is (good) evidence (of ownership). Moreover it has been stated<sup>3</sup>: “Even possession is five-fold, *viz.*: it is with a title, long-continued, uninterrupted, without a protest (from the opponent) and with notice to<sup>4</sup> the opponent.”

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Sometime, however, possession is accepted as evidence and (in such a case) it does not depend upon title, so the Author says:

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1. Ch. I. 85.

2. By Nârada ch. I. 86.

3. By Vyâsa.

4. *i.e.* in the presence of the defendant.

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Vinā pūrvakramāgatāditi, excepting where it has descended from a line of ancestors; pūrvakramah, line of ancestors, is the (continued) line of the past three ancestors such as the father and the rest. Vinā, excepting, that bhoga, possession,

5 \* Page 22. which has come down in this way, A'gamō abhyadhikah, title is superior; this is the

context. The meaning is that such a possession being even superior to title is (good) evidence independently of title.

Even then, it is independent of the knowledge of a (lawful)

10 title, and not of its existence itself. It should be marked that the existence of title is deducible from that (i.e., possession) itself. Moreover, the text 'excepting when it comes down from a line of ancestors' refers to immemorial possession; while the text "title is superior to possession" refers to possession within memory. Hence

15 also in the case of possession within memory, it (i.e., possession) has evidentiary value only when it co-exists with (the means of) knowledge of title, because if the absence of knowledge is not here properly accounted for, it is possible that an (absolute) absence of (a legal) title may be presumed. In the case of immemorial posses-

20 sion, however, a long continued possession is itself evidence (of ownership) independently of the knowledge of title, because in that case there is an absolute absence of the means by which want of knowledge of the origin (or title) is accounted for. This very thing has been made clear by Kātyāyana:<sup>1</sup> "In cases (falling) within the

25 memory of man, possession in the case of land, is regarded as evidence of ownership when it is with title. But in cases (extending) beyond human memory, enjoyment by three generations suffices, on account of the absence (of knowledge) of (the proof of) title." Time within the memory of man extends as far as a

30 hundred years. As there is the S'ruti, "a (purusha) man has a hundred years' (duration) of life, Anugamibhārat, on account of the absence of proof &c., i.e., owing to the absence of a positive certainty as to the non-existence of title on account of the

1. Here there is a mistake in the print; a p. 22 l. 3 for अप्यनिकारः read अप्यनिकारः.

2. Verse, 331; Comp. Nārada L. 89.

non-existence of proper means of the knowledge of title<sup>1</sup>. Therefore possession creates ownership when it is for more than a hundred years (which is), uninterrupted, without a protest (with the knowledge), and in the presence of the opponent and when the origin of title has not been determined, inasmuch as a (legal) title is presumed in the absence of (proof to) the contrary. Even in the case where possession extends beyond the memory of man, it is not evidence (of ownership) if there is a tradition about its being without a title. Hence also has

1. दोषातुरात्मिकः—mark this term. अत्यधि means ज्ञान् or knowledge; and an अनुसंधानिक is its absence. An अवज्ञनिक may occur in two cases, viz. (1) where there is no capacity for the perception, but still there is want of perception; and in this case the अवज्ञनिक is दोषः; and secondly (2) where there is an absolute absence of capacity for perception and therefore there is want of perception in which case there is दोषातुरात्मिकः. Thus, दोषात्मिक may be possible in two cases (1) where the प्रत्यक्षात्मिक is due not to an absolute absence of the means of perception of the वृत्त such as eyes &c but still there is ज्ञानात्मिक. Here no doubt there is an अवज्ञनिक in spite of the existence of circumstances necessary for an अवज्ञनिक i. e. there exists an initial capacity for the perception, but still an imperception occurs and so the अवज्ञनिक is दोषः. Stated in simple language, where there is ज्ञानात्मिक for दर्शनेभ्यः but still there is an अवज्ञनिक we have a दोषातुरात्मिकः. See *Bālambhātti* p. 42 l. 3. “दोषाते दोषातुरात्मिकः” (2) where, however, there is an absolute absence of the (ज्ञानात्मिक) capacity for perception, there is no possibility of an अवज्ञनिक at all as e. g. on account of blindness &c, in such a case there is अवज्ञनिक but not a दोषातुरात्मिकः, so there is a दोषातुरात्मिकः :

In the present context, where the possession is recent, it is possible to ascertain the origin, but there may exist circumstances which may account for the non—knowledge (अवज्ञनिक) of the origin, in such a case there is दोषातुरात्मिकः. In the case of long—continued possession the origin of the title is not known, and it is not known because it is absolutely impossible to know it. Here there is दोषातुरात्मिकः ।

The purport of the above may be put in short and simple language thus: Non-perception of a thing may be due to two circumstances viz. (1) absence of means of perception but with a capacity to perceive, and (2) absence of the capacity for perception—In (1) it is दोषातुरात्मिकः, in (2) it is दोषातुरात्मिकः e. g. the question is whether a man is learned.<sup>2</sup> For determining this, learned men are required to test the capacity of the man who says that he is learned. If learned men are available and still the capacity or learning of the man does not come out it may be properly said that the learning does not exist at all—here there is a दोषातुरात्मिकः. But if learned men are not available and the capacity remains undetermined on that account there is an अवज्ञनिकः which may be explained by a proper reason and therefore there is a दोषातुरात्मिकः ।

it been said<sup>1</sup> that "He who enjoys without a title even if it be for many hundred years, the ruler of the land shall inflict on that sinful man the punishment ordained for a thief."

It should not, however, be supposed by the use of the singular number in "He who enjoys without a title" and the use of the word *even* (*api*) in "even if it be for many hundred years," that a punishment has been ordained (only) for the first acquirer without title even if the possession is held for a long time. This does not hold as (in that case) in the case of the second and the third generation even 10 a possession without title may come to be accepted as evidence (of ownership), as Nârada<sup>2</sup> has said : "In the case of the first acquirer, gift is the (proper) cause (of title); while for the intermediate generations possession with title (is the cause)." Therefore in all cases, 15 of possession without title the rule (laid down in) "he who enjoys without a title &c." should be observed.

As to what has been said<sup>3</sup> viz. "When possession has been successively held, even though unlawfully, by the three ancestors and the father, the property (so held) cannot be taken away from him, because it has descended through three (successive) lives in order," 20 even there, it should be construed as "by the three ancestors along with the father." There also the expression "descended through three (successive) lives in order" is indicative of a period beyond the memory of man. (Because) if it be taken (only as) referring to three (particular) lives, it is possible that three lives might be over even 25 within the space of one year and possession without ownership might become evidence (of ownership) even in the second year (of occupation). And in that case there would be a conflict with the Smriti<sup>4</sup> "In cases (falling) within the memory of man, possession in the case of land, is regarded as evidence of ownership when it is 30 with title."

The text *onnydyenâpi yadbhuktam* 'when possession has been held even though unlawfully &c.' should be construed as follows—"what has been possessed cannot be taken away, even though it be unlawfully (held); what then where the illegality (of the possession)

1. By Nârada I. 87.

2. See Kâtyâyana, Verse 322.

3. Nârada I. 91.

4. Of Kâtyâyana, Verse 321.

is undetermined", inasmuch as the word *api* (even though) has been used in it.

As to what has been said by Hārīta *viz.*: "What has been held in enjoyment in continuation by three (generations of) ancestors without any title whatsoever and what has descended through three (successive) lives in order, cannot be taken away", even there, (the expression) *atyantamāgamam vind* 'without any title whatsoever' is to be explained as without any available title &c. and not without any title at all. It has (already) been said that there cannot be ownership even with a hundred (generations) of possession if the title itself is not available. The import of *kramit tripurushāgatam* 'descended through three lives in order' has been explained.

It may be said: "Possession cannot properly be accepted as evidence of ownership, because when it is within

An objection. the memory of man it is dependent upon title.

For, if title is known by other means (of proof), then ownership having been established by the same (means), possession is not evidence either of ownership or of title. And if title is not known by other means, how can possession which is qualified by title be evidence?" (To this) the answer is as follows: Even possession which is accompanied by a title though proved by other means when uninterrupted creates ownership in course of time. A title though proved is not sufficient to create ownership in course of time, (if it be) without possession, as a gift or sale in the meanwhile might create a title to ownership. Thus the whole is unobjectionable. 27 (1)

It has been said that possession is evidence (of ownership) when it is accompanied by title; then (it may even be said that) title is evidence (of ownership) independently of possession. So the author says

Yājñavalkya, Verse 27 (2).

In a title also there would be no force if there is no possession even for a short time.

Mitâksharâ :—In (the case of) a title where bhuktih, possession even for a short time does not exist, no; in that (i. e. that title) there is stokâpi not full force Balam.

This is the meaning intended. A Dâna, gift, is that where there is a cessation of one's ownership and the commencement of another's ownership is secured;

\* Page 23. if the other accepts it as his own, and not otherwise. Acceptance, moreover, is threefold. Mental, Mânasah,

Verbal, Vâchikah, and Physical, Kâyikasoha. Of these the

10 Mânasa or mental is in the form of a (mental) resolution that 'it has become mine.' "The Vâchika or verbal is an objective' recognition of the thing (as one's own), with the utterance of the words "this has become mine." The Kâyika or physical is of many sorts viz. by actual receipt or by touching (the subject matter) &c. In

15 this respect a rule has been laid down: "A deer-hide should be given by (means of touching) the tail, a cow by the tail, an elephant by the trunk; by the hair, should similarly, a horse be given and a maid by the head." Âswalâyana also says.—"The consent of sentient beings should be obtained; non-sentient beings and a maid should be

20 touched."

There, in the case of gold (i. e. money), as physical acceptance becomes complete only after the offering of the water,<sup>2</sup> clothes &c. all the three modes of acceptance are observed. In the case of land etc., however, a (complete) physical acceptance being impossible without the enjoyment of profits, the acceptance should be by possession (for) however short a time (it may be); otherwise a gift, or a sale does not become complete. Thus a title becomes weak if it is unaccompanied by (actual) physical acceptance in the form of the enjoyment of profits, because, there such a title i. e. one with possession is wanting. This,<sup>3</sup> however, would be

1. मृदिकरात् is the same as संकेषणां having reference to a particular condition or object. Note the ordinary process in daily offerings. e.g. (1) अपि दाता (2) अपि हृषि (3) न दद्यन् Thus it typifies the essentials of a donation viz. सम्मतवस्तुति and प्राप्तत्वात् cf. *Domestic of the Roman Law and its essentials*.

2. As distinguished from the land &c. in which case acceptance is not complete until profits are gathered in.

3. For an exposition of this passage and its context see the Bilambhatti Sk. p. 45 II. 4-6.

where the priority of time between the two is not known. When, however, the priority of time is known, a prior title alone will have force even if it is wanting in (the necessary) qualities.

Or again, it has been laid down<sup>1</sup> that evidence is of three kinds viz. writing, witnesses and possession; it may be asked, where all these exist together which of them would prevail and where? So the answer that would naturally suggest itself is this: "Title is superior to possession, excepting where it (*i. e.* possession) has descended down from a line of ancestors. In a title also there would be no force if there is no possession even for a short time." The meaning is this. In the case of the first acquirer, title established by witnesses is even stronger than possession, unless there is a possession which had come down from a (successive) line of ancestors. Such possession moreover, coming down from a (successive) line of ancestors in the case of the fourth generation becomes stronger than a title established by a writing. While in the case of the intermediate generation, a title accompanied by possession even though short is superior to a title without possession. This very thing has been made clear by Nārada<sup>2</sup>: "The origin (of title) in the case of the first (acquirer) is gift, in the case of the intermediate (holders) possession with title, and in the case of possession which is long and continued, (such) possession is itself the sole origin." 27 (2).

### Viramitrodaya.

Possession without a lawful origio (even though) extending over more than three generations is not evidence of title, but only such as has a lawful origio; so the Author says

Yājñavalkya, Verse 27.

The possession which is other than that handed down in a line *i. e.* comes to from the preceding lines of ancestors such as the father, and the three ancestors, even greater than that, and different but arising out of it is the *dgamah*, 'origin of title' such as rule, acceptance of a gift &c. by reason of the derivation viz., *dgachchhatate*, 'comes' *i. e.* becomes one's own, by which, that. The preposition, *abhi* is used to secure the parts.

1. *i. e.* in verse 22 above p. 713 as means of evidence.

2. Cf. Kātyāyana, Verse 322.

Indeed if thus a legal origin of title is necessary to be established, then for establishing one's own proprietary interest, a continuity of possession would be useless. (Anticipating this question) the Author says—In regard to property such as land, &c., even if a little, as compared with possession for three generations, i.e., for a short time even, possession does not exist, there even a legal origin of title has no force, i.e., will not be helpful in establishing the object at issue. Even if the existence of a legal origin of title be proved, by reason of the same not having been proved to have been purposed, for establishing it, it is necessary to establish continuity of possession. This is the meaning.

Although, a legal origin of title has not been pointed<sup>1</sup> separately as a distinct means of evidence, still, it should be noticed that it is included in 'inference', added to by the word *cha* 'and'.

For three generations, i.e., possession enjoyed for three generations even if without (the establishment of) a legal origin, is still sufficient to establish the point at issue. So it will be stated further on. (27).

### S'ulapāṇi.

#### Yājñavalkya, Verse 27.

In the case of land &c. a legal origin of title handed down from past generations is stronger than possession. Therefore, possession transmitted through generations is stronger than title. So Bṛhaspati:<sup>2</sup> "A witness prevails over inference; a writing prevails over witnesses; undisturbed possession for three generations is stronger than both these". Vyāsa mentions possession by three generations: "That which was held in possession by the great-grandfather; and also by his son after him; and after these two, by his father also, the possession of such a one is for three generations". Bṛhaspati:<sup>3</sup> "Should even if the father, grandfather, and the great-grand-father of a man be alive, possession of the (possession of the) three during their joint lives together is to be known as possession for one generation".

Title also becomes powerful, when possession even for a short time does not exist. So Nārada:<sup>4</sup> "Though a document be in existence, and witnesses be living, particularly in regard to immovables, that which has not been held in possession is not permanent." (27).

1. i.e. in Verse 22 above.

2. Ch. IX. 32.

3. Ch. IX. 23-25.

4. Ch. I. 77.

By the text<sup>1</sup> “*Passyataḥ abruvntaḥ* etc.” [while (he) sees does not object etc.], it has been laid down that after twenty years in the case of land and ten years in the case of money there would not be a recovery of profits. Thinking that in such a case it may be supposed that as with the recovery of profits so there would not even be the recovery of fine, the Author proceeds to expound the law as to fines by considering the generation (of the occupiers) as well as the means of proof. So the Author says:—

## Yājñavalkya, Verse 28.

He who made the acquisition of a title if sued should prove it, (but) not his son, nor his (i. e. son's) son; (for) in their case possession has more force. 10

Mitksharā:—*Yena, by him, i.e. the person by whom of land etc. the acquisition of a title, Āgamāḥ, was made, kṛtaḥ, that man if challenged in a suit, abhiyuktāḥ, as to whence he acquired the land etc. should prove, uddharet, i.e. establish, it, tam, i.e. the title, as e.g. through gift etc., by means of a writing and other means of proof.* By this also it amounts to he laid down that the first acquirer is liable to be fined if he does not make out his title. 15

*His son, tatsutaḥ, i.e. the second, if sued need not prove title; but uninterrupted possession without protest and with notice.* By this it has also been proved that there would be no fine to the second if he does not prove title, but if he does not prove a particular manner of possession. *His son, tatsutaḥ, i.e. the third, need not prove either title or any particular manner of possession, but simply possession handed down in a (successive) line (of ancestors).* By this also it has been established that there would be fine for the third if he did not prove possession handed down in a line, and not if he does not prove title or a particular manner of possession. *In their case, tatra, i.e. in the case of the second and the third, possession, bhuktīḥ, alone has more force, gariyasi.* 20 25 30

There also, the distinction to be noticed is, that in the case of the second it has force, while in the case of the third, there is greater force. The loss of the thing takes place equally to all the three, that

1. Verse II. 24 p. 41, II. 36-37 of Eng. Tr. p. above.

is, the purport is that if title is not proved the distinction has a reference to the fibre only. Hârita also has said—"He, by whom an acquisition has been made, is liable to punishment if he does not prove it, and not his son or his (*i.e.* son's) son; but even these lose 5 the thing possessed." 28.

### Viramitrodaya

At times, even elsewhere also, mere possession is proof (of title); so the Author says

Yâjñavalkaya, Verse 28.

10 The person who made the acquisition of title, such as by purchase &c., such a one when challenged in a judicial proceeding, *i.e.*, asked to establish his title, *tam dḡamam*, 'each origin of title', *uddharet*, 'he should prove', *i.e.*, establish by evidence.

15 *Tasya*, 'of him', *i.e.*, of the one who acquired the title, son, or also the son of the son of him who acquired the title, need not establish the origin of the title acquired by the grand-father.

*Tatra*, 'in their case', *i.e.*, in the case of his son and the succeeding generations, *bhuktiḥ*, 'possession', *gariyast*, 'has more force', *i.e.*, irrespective of any other, is sufficient to establish the claim.

20 The word *ad*, 'or', is used to show indifference; by that are included the great-grandson, &c. In *Tatra*, 'in that case', the Locative is used as having the force of the Possessive case. By the use of the word *tu*, 'however', is excluded possession; even in that case also, the enjoyment being necessary to be established. (28).

### S'ulapaci.

Yâjñavalkya, Verse 28.

One by whom witnesses, documents &c. have been indicated in writing in the case of (disputes regarding) land &c., such a one should expose the falsity of witnesses, documents &c. relied upon by the person 30 complained against passed by another. His son and grandson, however, need not try to prove. In their case, possession itself will expose the falsity. It is not correct to explain *uddharet* 'should prove' as *darśayet* 'should point out.' In that way in the case of the son and the rest, when mere possession being proof of the rule 'that possession for three generations 35 is proof', may not hold. As says Bhîshatî<sup>1</sup>: "The person who has

1. See Ch. IX. 25.

taken possession should establish his possession, as well as the origin of his title, in the Court; his son, possession alone; and in the case of grandsons &c. nothing whatsoever". The meaning is, that by regard to the rule "that pure possession without interruption in the case of grandsons" by grandsons, the origin of title or of possession need not be proved. The 5 origin of title and the possession, however must be pointed out. (28).

## \* PAGE 24.

By the (qualifying) text<sup>1</sup> "excepting where it has come down from a line of ancestors" it has been laid down that possession may be (accepted as) evidence when it extends beyond the memory of man and in which case it is independent of the knowledge of title. The Author mentions an exception to this

## Yâjñavalkya, Verse 29.

If a person happen to die while a suit was filed against him his (legal) heir should prove it. In such a case 15/ possession is no evidence (i.e. of ownership) if it is not proved to be accompanied with title.

Mitâksharâ :—When, however, a trespasser etc., abhiyuktah, while a suit had been filed against him, and before the suit was decided, paretah, happen to die i.e. happen to depart to the next world, then his heir, tasya rikthi e.g. sons etc., tam uddharet, should prove it i.e. the title; since in such a case, tatra i.e. in that suit, bhuktih, possession, without title, even though established by witnesses etc., is no evidence. Because by reason of a suit against the last holder, possession ceased (to have any value as evidence). It has also been said by Nârada<sup>2</sup>: "Of the litigant who has died while a suit was filed against him, the son should prove the title, (since) the point (at issue) will not be established by (mere) possession." 29.

## Viramitrodaya.

Here, in this connection, the Author mentions an exception 30

## Yâjñavalkya, Verse 20.

Since, in such a place, *dgamena vînd krti*, 'held without title', i.e., unaccompanied, *bhuktir na karanam*, 'possession is no evidence', i.e., for establishing the point at issue.

1. Yâjñavalkya II. 27 (1) see p. 733 above.

2. Ch. I. 93.

Here, moreover, possession is evidence (of ownership) if it has the five characteristics,<sup>1</sup> viz.: "If it is with a legal origin of title, long-continued, without any gap, without protest from another, and in the presence<sup>2</sup> of the defendant." Thus, by the text,<sup>3</sup> "Title is superior etc.", its being coupled with a legal origin of title, by the text,<sup>4</sup> "for twenty years, etc.", its long-continuance and uninterruptedness, also by the text,<sup>5</sup> "without protest, etc.", its being without a protest from another, and by the text,<sup>6</sup> "while looking on, etc.", the near presence of the defendant, has been pointed out.

In some places, it has been stated that in the case of possession for three generations, accompaniment by a title is not required (to be established)—there it is doubtful, because without the origin of a legal title, the acceptance of (mere) possession (as sufficient), would be in conflict with the Smṛtis. For, says, Nārada<sup>7</sup>: "He who enjoys without a title for ever so many hundred years, the ruler of the land should inflict on that sinful man, the punishment ordained for a thief", also<sup>8</sup>: "By (establishing) a clear title, possession obtains an evidentiary value. Possession without a title which is not clear does certainly not make for (any) evidence (of ownership)".

Here, by the use of the word *eva*, 'certainly', and also by a re-interpretation of what was established once, it may be said that in all cases possession is evidence of title only when it is accompanied by a legal origin of title. Not so. The text of Nārada has application only when an absolute absence of a legal origin is positively determined. And thus, possession for three generations or the like, will have evidentiary value even when there is a doubt about the (origin of) title. Intending this very thing, the same<sup>9</sup> writer says: "Even though unlawfully, when possession has been held successively, by the father and the three prior ancestors, that property cannot be taken away from him, because it has descended through three (successive) generations in order." "That which even without a title has been enjoyed before by three generations, that having been handed down for three generations cannot be disturbed."

Vyāsa also:—"That which is absolutely without a title and as such has been enjoyed by three preceding ancestors, such a thing bearing

1. Aparārka assigns this text to Vyāsa, while the Smṛtiḥnandrikā to Pitāmaha.

2. i.e. with notice to him.	3. Yājñ. II. 27 (1).
4. Yājñavalkya II. 24—2nd quarter.	
5. and 6. " " 1st quarter.	
7. Ch. I. 87. 8. Ch. I. 85.	9. Ch. I. 91.

been handed down in succession for three generations, cannot be disturbed. What was held in possession by the grandfather, and by his son after him, and after these two by the father also, the possession of his, is possession for three generations. For twenty years having been enjoyed by the owner without disturbance, such possession of land is as far as one generation, double that is for two generations, and for three generations is treble; in such a case origin of title is not necessary." 5

Thus, moreover it has been established that possession for twenty years is evidence only when there is certainty of a legal title, the proof of which it contemplates. 10

Indeed even thus, in the text<sup>1</sup>: commencing with 'while looking on and not protesting' and its theory, so in the text<sup>2</sup>:

An objection. "Whose possession has been continuous, and has never been interrupted for thirty years, from him, that should not be disturbed." The contradiction between these is apparent 15 there itself. By stating that a thirty years' possession has evidentiary value, in effect the evidentiary value of twenty years' possession is discarded. The answer is: No. The text 'While looking on and not protesting' has application where the possession is

The answer. without protest, while in the text of Brhaspati by the 20 use of the word 'not uncontinuous' possession characterised by quarrel, heating and like other interruptions, even possession with protest also is deemed to have evidentiary value.

And thus as the result of all the texts, and a conflict by regard to (the fact of) a difference of subjects, the capacity for possession for ten years and the like either as creating a title for ownership, or to serve as its evidentiary value, has been removed. Not the first, like acceptance (of a gift) possession not having the force to be regarded as a source indicative of proprietorship; nor the last, as generally in a possession without a title there is a vitiation. 25

Oh! indeed! Then direct a similar view to possession for three generations! If it be on the strength of an express text, then in such a case, the decision would be by regard to the principles of a fraudulent action. Or if a text laying down the evidentiary value of a possession for three generations is alone the basis for its being accepted 30 as the means of origin of ownership, then it is similar to the one under consideration, and in this way if it be suggested that this possession for six months even, would by a parity of reasoning, be regarded as evidence

Here, moreover, possession is evidence (of ownership) if it has the five characteristics,' viz.: "If it is with a legal origin of title, long-continued, without any gap, without protest from another, and in the presence' of the defendant." Thus, by the text,' 'Title is superior etc.', its being coupled with a legal origin of title, by the text,' 'for twenty years, etc.', its long-continuance and uninterruptedness, also by the text,' 'without protest, etc.', its being without a protest from another, and by the text,' 'while looking on, etc.', the near presence of the defendant, has been pointed out.

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20 Here, by the use of the word *esa*, 'certainly', and also by a re-iteration of what was established once, it may be said that in all cases possession is evidence of title only when it is accompanied by a legal origin of title. Not so. The text of Nārada has application only when an absolute absence of a legal origin is positively determined.

25 And thus, possession for three generations or the like, will have evidentiary value even when there is a doubt about the (origin of) title. Intending this very thing, the same' writer says: "Even though unlawfully, when possession has been held successively, by the father and the three prior ancestors, that property cannot be taken away from 30 him, because it has descended through three (successive) generations in order." "That which even without a title has been enjoyed before by three generations, that having been handed down for three generations cannot be disturbed."

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Thus, moreover it has been established that possession for twenty years is evidence only when there is certainty of a legal title, the proof of which it contemplates. 10

Indeed even thus, in the text<sup>1</sup>: commencing with 'while looking on and not protesting' and its theory, as in the text<sup>2</sup>:

An objection. "Whose possession has been continuous, and has never been interrupted for thirty years, from him, that should not be disturbed." The contradiction between these is apparent there itself. By stating that a thirty years' possession has evidentiary value, in effect the evidentiary value of twenty years' possession is discarded. The answer is: No. The text 'While looking on and not protesting' has application where the possession is 15

The answer. without protest, while in the text of Brhaspati by the use of the word 'not contentious' possession characterised by quarrel, heating and like other interruptions, even possession with protest also is deemed to have evidentiary value. 20

And thus as the result of all the texts, and a conflict by regard to (the fact of) a difference of subjects, the capacity for possession for ten years and the like either as creating a title for ownership, or to serve as its evidentiary value, has been removed. Not the first, like acceptance (of a gift) possession not having the force to be regarded as a source indicative of proprietorship; nor the last, as generally in a possession without a title there is a vitiation. 25

Oh! indeed! Then direct a similar view to possession for three generations! If it be on the strength of an express text, then in such a case, the decision would be by regard to the principles of a fraudulent action. Or if a text laying down the evidentiary value of a possession for three generations is alone the basis for its being accepted as the means of origin of ownership, then it is similar to the one under consideration, and in this way if it be suggested that this possession for six months even, would by parity of reasoning, be regarded as evidence 30 35

of ownership, the answer is, no. For a subject, covered by an express text, there is no scope for a maxim. This is the point. (28).

### S'ulapāṇī.

#### Yājñavalkya Verse 29.

5 If the person complained against be dead without proving his title, then his son and the like should establish the title. So says Nārada<sup>1</sup>: "If a litigant dies during a law suit of this sort which has been commenced, and not decided, the point must be established by his son. Possession (of the father) will not be sufficient".

10 Possession for three generations with a title has evidentiary value. So says Kātyāyana<sup>2</sup>: "Land which has been enjoyed in possession for three generations in due course, in such a case that land will be retained by the fourth even in the absence of a document" The same Author<sup>3</sup> explains the expression *yathā vidhi* 'in due course', thus: "With a legal 15 origin of title, long-continued, without a gap, without interruption by another, and in the presence of the opponent. Thus of five characteristics is possession intended." "After establishing a clear title, possession obtains an evidentiary value. Possession without a title, or with a title which is not clear, does not make for (any) evidence (of ownership)". (29).

20 It has been established that where a suit remains undecided and a litigant dies, the (proceeding of the) suit does not stop (there). In some cases, however, where a suit is decided or a litigant is living, a suit is re-tried, and in some cases it is not re-tried; for a determination of the rule (applicable) in these cases, the Author 25 mentions the comparative superiority and inferiority of those who decide disputes

#### Yājñavalkya, Verse 30.

In matters of legal proceedings between men, officers appointed by the King, the Pūgas, the S'repis, and the Kulas, 30 (each of these) preceding should be considered to be in the superior order of priority (specified here).

1. Ch. I. 93.

2. Verse 327.

3. See note 1 on p. 744 above. Here S'ulapāṇī assigns this text to Kātyāyana.

4. Nārada I. 85.

Mitākṣharā :—Nṛpena, by the king, i.e. by the ruler; adhikṛtāḥ, appointed, for trying and deciding legal proceedings, referred to in the text<sup>1</sup>: “A king should select as his Councillors, &c.” and pugāḥ, corporations, i.e. of men (though) belonging to different castes and (following) different occupations, but residents of the same place e.g. of a city, town &c.; srenayāḥ, trade-guilds of persons earning their livelihood by the same (kind of) labour whether belonging to different castes or to the same caste e.g. of the dealers in the cattle, beetle, the weaver and the currier; kulāni, groups of caste-people, relatives, and cognates.

5

10

Of these four i.e. officers appointed by the King &c. pūrvam pūrvam, in the order of priority, whoever has been mentioned first, those in order, jñeyāṇ, should be considered i.e. regarded, as balavat, more powerful i.e. superior, nṛṇām, between men, i.e. men engaged in litigation; vyawahārawidhau, in the matter of legal proceedings, i.e. in the matter of trying and deciding a dispute.

15

This is the meaning intended: In the case of a suit decided by officers appointed by the king, there would be no fresh hearing before Pilgas &c. on the ground of a wrong (exercise of) judgment, even if the defeated party is dissatisfied. Similarly, even in the (case of the) suit decided by Pilga there would be no appeal to S'reṇis &c. So on a decision by the S'reṇi there can be no resort to the Kula. But from the decision of the Kula one may go to the S'reṇi &c.; from the decision of the S'reṇi to the Pilga, and from the judgment of the Pilga to the officers appointed by the King.

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25

Nārada<sup>2</sup>, however, has said that there would be an appeal to the king even from a decision of the officers appointed by the king “Kulas, S'reṇis, Pilgas,<sup>3</sup> an officer appointed (by the king), and the king (himself) are invested with the power of deciding law suits; and of these, each succeeding one is superior to the one preceding him in order.”

30

In such a case, moreover, where a party appeals to the king, if in a trial with a wager before the king and his councillors together

1. See Yājñ. II. 2. p. 2.

2. Introduction Verse 7.

3. Gatas (V. L.)

with the officers before whom it was first tried, the party complaining of impartiality is defeated, he should be fined. But if he succeeds, then the officers appointed as judges should be fined. (30.)

## S'ulapāñi

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## Yājñavalkya, Verse 30.

*Pūgah*, 'An association formed e.g. of grocers and the like is called *Pūga*', thus stated by Kātyāyana'; and the collection of grocers and others of different castes, is *Srenī*; an assemblage of those of the same caste is a *Kula*, other than that. Of these when authorised by the king,  
10 in the matter of a decision of a dispute, the one prior is more authoritative than the one succeeding. This in regard to a rehearing has greater force. e. g. what has been decided by the *Pūga*, must not be interfered with by a *Srenī*. This is the meaning.

By these should be decided excepting cases involving heinous  
15 offences and the like. So says Br̥haapati: "Those groups such as the *Kula*, *Srenī*, *Ganas* and the like as have been duly appointed by the king, should decide cases of disputants excepting those relating to the adjudication of heinous offences." (30).

It has been said that a suit decided by an inferior tribunal  
20 may be retried, and that decided by the superior is not reopened. Now the Author mentions cases where even a suit decided by the superior tribunal is reopened

## Yājñavalkya, Verse 31.

Transactions brought about by force or fraud should  
25 be upset, so also those entered into by women, at night, in the interior of the house, outside, or with the enemies.

*Mitāksharā* :—*Balēna*, by force, i. e. under compulsion;  
upādhinā, by fraud, such as threats etc.;  
30 \* Page 25.      *vinirvṛttān*, brought about, i. e. produced:  
*vyawahārānniwartayet*, transactions should  
be upset. Similarly *stribhīt*, by women; *naktam*, at night, even if  
by others than women; *antarāgāre*, in the interior apartment of  
the house; *bahir*, outside the village; *satrubhīscha kṛtān*, as

also those transactions entered into with the enemies, should be reopened. This is the construction. (31.)

## S'ulapāni.

Yājñavalkya, Verse 31.

By force, or by fraud brought about, as also that made by women, at night, or in the inner apartment of a house, or those entered into outside the town, the transactions such as of sale, gift, and the like, as also entered into with the enemy, one should avoid (31).

A transaction entered into by the intoxicated, the insane etc., will not be upheld

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Yājñavalkya, Verse 32.

A transaction<sup>1</sup> entered into by a person (who is) intoxicated, or insane, or afflicted with disease, by one in distress, or by a minor, or one frightened, or the like, will not be upheld ; as also that entered into by one who has no connection.

15

Mitāksharā :—Moreover, mattah, *intoxicated*, by some intoxicant, unmattah<sup>2</sup>, *insane*, affected by insanity caused by either of the five causes viz. (disorder, arising) from Vāta<sup>3</sup> (wind), Pitta (bile), S'leshmā (phlegmatic humor), or a combination of these, or by an evil demon, or by (the influence of) a plant. Ārtah, *afflicted*, with a disease etc.; vyasanam, *distress*, is the pain caused by the separation from the loved and acquisition of the undesired; and a vyasani, *distressed*, is one who is affected by it; bālah, a minor, incapacitated for (entering into) any transaction; bhītah,

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1. A व्याप्ति may better be rendered as "a transaction" in this context. The general conditions in this and the last verse apply as well to suits as to other transactions.

2. An Unmida has been thus defined:—"मृद्युन्युदतः देहस्य यत्काङ्गाद्यादिनः : समोऽप्यस्मैः वाच्यं प्रकारं इति कर्त्तिरः ।" Śūśruta.

3. Recognised by the Aryan Medical System as the three principal humors of the human body, every disorder of the body or of the mind being traceable to a disorder of one or more of these or of all the three combined, in which case it is called a Sansipātih (संसिपातिः).

frightened, by the enemies. By the use of the term A'di, or the like, is also indicated one who is inimical to the city<sup>1</sup> or to the nation. As Manu<sup>2</sup> has said :—" Men conversant with law and religion have laid down that a suit which is (instituted by one who is) opposed to the city or the nation, or a suit decided by the king is unacceptable as a plaint."

By these yo jitah, entered into, brought about ; vyawahāra na siddhyati, a transaction will not be upheld. Also a transaction entered into by one having no connection, or by one who was not appointed as an agent, will not succeed. This is the construction.

As to what, however, has been said viz.—" A suit will not lie between a preceptor and a pupil, a father and a son, between the husband and the wife, or between a master and a servant, even if they are at conflict with each other " even that is not to be taken as amounting to (lay down) an absolute exclusion of a suit between a preceptor and a pupil and such others, as a suit has been ordained (to lie) even between them. For Gautama<sup>3</sup> has said : " A pupil shall not be punished corporally. If (this course is) impossible, (he may be corrected) either with a thin rope or a thin cane. If (the preceptor) strikes (the pupil) with any other (instrument) he shall be punished by the king." As Manu<sup>4</sup> also has said " In no case should the punishment be upon the head." When (however) the preceptor under the excitement of anger, while punishing, strikes on the head and if the pupil (who was) thus injured in a way, which is a violation of the (laws of) Smṛti and usage, complains to the king, then a cause of action (for a trial) does certainly arise &c.

Similarly, under the text<sup>5</sup> " Land which was acquired by the grandfather &c. " the ownership of father and son being equal over land &c., if the father destroys by means of sale &c. (the title to) the land &c. which was acquired by the grandfather, and if the son resorts to an officer of justice, then there would certainly arise a suit even between a father and a son. Likewise, under the text<sup>6</sup>

1. i.e. opposed to the municipal, local or general interests.

2. Not found in Manu.

3. Ch. II. 48-50.

4. Ch. VIII. 301.

5. Yājñ. II. 121.

6. Yājñ. II. 147.

"A husband is not liable to make good the property of his wife, which was involuntarily taken by him in a famine, or for the performance of a (religious) duty, or during illness, or while under restraint" if the husband having spent away the wife's property (even) when there was no famine &c., does not pay back when asked for, even when possessing wealth, then a suit is certainly admissible even between a husband and a wife. So also the legal relations between a slave of maintenance and the master will<sup>1</sup> be mentioned later on, and having regard to the text of Nārada<sup>2</sup> viz. "Should any one of these, however, save his master when his life is in peril, he shall be released from slavery and shall take a son's share (of his master's wealth), even in the case of a slave by birth, who would avoid a suit against a master, if the slave is not manumitted and not given a son's share? Therefore the purport of the verse beginning with "Between the preceptor and the pupil" &c. is that as a dispute with a preceptor &c. will hear no good result in this world or the next, so the pupils and others should in the first place be induced away by the king in company with the assessors. If, however, the parties press hard, a suit has to be commenced even (when instituted) by the pupil &c.

Although the text of Nārada<sup>3</sup> says that "Men conversant with law lay down that disputes between one and many, with women, and with servants are inadmissible as a suit;" still having regard to the text<sup>4</sup>: "He who robs the wealth of the villagers or transgresses any established usage &c." and the text<sup>5</sup>. "When one is assaulted by many &c." even a suit between one and many appears to be ordained, when they have a common cause of action. It should be noticed that a suit between one and many simultaneously will not lie when the many have different causes of action.

As for the expression 'with women', *Strīḍam*, in their case also a suit certainly is allowed e.g. with the female of a cowherd, a vintner, and such others inasmuch as these women possess independence. The text is to be explained that a suit between women other than these—i.e. women of good family whose husbands

1. Yājñ. II. 162.

2. V. 30.

3. II. 12.

4. Yājñ. II. 167.

5. Yājñ. II. 221.

are living shall not be admissible on account of their dependence. *With servants*: This text also should be construed to mean that 'on account of the dependence of servants upon the masters', even in a dispute relating to his (servant's) own interests a suit should be allowed only with the master's sanction, and not otherwise. 32

### Viramitrodaya.

It has been stated<sup>1</sup> that 'even while yet a suit has remained undecided, a party dies, the suit proceeds'. Now, even when a suit has been decided, and even when the party is living, sometimes the litigation

proceeds, and sometimes not, so the Author says

Yâjñavalkya, Verses 30, 31, 32.

*Nrpenâdhikyâtâh*, 'appointed by the king', such as the Councillors; *Pugâh*, 'corporations' of men of different castes, such as the grocers &c. vide this text of Kâtyâyana: "The association such as of the grocers and the like is called *Pâga*"; *S'renîh*, an association of people of various castes but earning their livelihood by the same (kind of) work; *Kulam* groups of caste people, relatives, and cognates. Among these, the one prior by regard to each succeeding, *nrñdm*, 'of men', *râjavâdravidhau*, 'in the matter of legal proceedings'; *guru*, 'superior', more powerful.

Thus it is established that a transaction examined and decided by the Councillors, even if there be a suspicion of the decision, being faulty shall not be scrutinised by the *Pâgas* and others, while a dispute decided by the *Kula* may be revised by bodies as far as the *S'renis*.<sup>2</sup> Similarly may be understood elsewhere.

By the use of the word *atha*, 'and', all being under the king's province, the superiority of the king above all has been pointed out. By the word *cha*, 'and also' has been added the conclusion that the Chief Judge is higher than the councillors.

So also Kâtyâyana: "The Councillors are superior to the *Kulas*; the Presiding Judge is superior to these; more than all is the king by whom the law has been settled. Of suits of the type of the highest, middling, and the lowest types, decided by tribunals of ascending degrees, the judgments have a (corresponding) superior effect". (30)

*Balam*, 'force' i. e., superior (force); *upadhih*; 'fraud', such as threats, temptations etc.; by these *cimirytan*, 'brought about', i. e.

1. See Yâjñ. II. 29 above.

2. Verse, 679.

3. i. e. the Councillors appointed by the king, the *Pugas*, and the *S'renis*.

produced ; *stribhirnaktam*, 'by women, at night', even by others than women ; *antarāgdra*, 'in the interior apartment of the house', inside the house ; *bahih*, 'outside' the village etc. in the forest etc. ; *śatrubhīścha kṛtān*, 'as also those entered into with enemies'; such *vyawahārān*, 'transactions', *nirartayet*, 'One should act inside', i. e. should not accept as binding, in other words, should have re-considered. 5

The compound is to be solved as 'entered into with women, at night, in the interior of the house, outside, or with the enemies'. The sense of the possessive is expressed in connection with the several words differently. That moreover has been already pointed out according to context. By the use of the word *tathā*, 'so also' are included those opposed to the interests of the town or the nation (31).

*Matto*, 'intoxicated' such as by some intoxicant etc.; *unmatto*, 'ineane', affected with insanity brought about by an evil star; *drto*, 'afflicted', oppressed by a disease; *ryasāni*, 'distressed', troubled by sorrow &c. ; *bdalah*, 'a minor', one under sixteen years of age ; *bhito*, 'frightened', one who has taken to flight; by the use of the word *A'di*, 'or the like' are included those affected by lust, anger &c. By those, *yojitāḥ*, 'entered into', i.e., made *asambandhena*, 'by one having no connection', i. e., one not having the connection of a brother &c.; *aniyuktena* 'by one not appointed', *vyawahāra na sidhyati*, 'a transaction will not be upheld', i. e., will not bear fruit. The substance is that the same should be considered again. 15 20

By the use of the word *cha*, are included those made by *Dāsas* and the like. The word *eva*, 'also', is connected with the expression 'will not be upheld' and follows with it. Thereby it comes to be stated that although one made by the *Kula* &c., be at times upheld, one of this character can never be upheld. Here, the word *Vyavahāra* does not mean merely justice, but indicates donation, sale, mortgage and all similar 'transactions.' 'A fraudulent' mortgage or sale, a fraudulent gift or acceptance, and (any transaction) where he detects fraud, he (the judge) shall declare null and void (166). What is given by force, what is enjoyed by force, and what has been caused to be written by force, and all transactions done by force, are as not made; so said Manu (169).<sup>1</sup> 25 30

Nārada: "If a boy, or one who possesses no independence, transacts anything, it is declared an invalid transaction by persons acquainted with the law (30). That also which an independent person does while he has lost control over his actions, is declared an invalid

1. Manu Ch. VIII. 166, 169.

2. —See Sri Sitaran Pandits, Sri Harihar Pandit, 23 Bombay 109,

3. Ch. I. 39-41, 29-30, 26-27, 42.

transaction, on account of his want of independence (40). Those who are actuated by love, anger, or affected by illness, fear, or difficulty, and also those who are biased by attachment or hatred, are to be known as having lost control over their actions (41). A transaction entered into by (a slave) is declared as unauthorised, except where there is the master's authority; a slave is never his own master (29). Also a transaction entered into by a son without the father's authority, that also is declared to be invalid; a slave and a son are equal in that respect (30). The transactions of gift, mortgage, or sale of land, house, or a slave made by those who are not independent, do not reach completion, when not ratified. They say that transactions entered into by women are unauthorised when there is no adversity; especially the transaction of gift, mortgage, or sale of a house or land (28). These transactions are only regarded as valid if the husband sanctions them; or the son in the absence of the husband; or the king in the absence of the husband and the son (27). In the family whosoever is the eldest or senior, and who has retained his control over the slaves, a transaction entered into by him is regarded as a properly entered transaction, and not done by one not independent (42). For the sake of the family, if one enters into a transaction although himself under control, and whether in his own country or in a foreign country, that transaction, the senior should not disturb." "Himself under control", such as a slave &c. One not independent will hereafter be described; so enough of prolixity (30, 31, 32).

## S'ulapāṇi

## Yājñavalkya, Versa 32.

By liquor or a like intoxicant, 'intoxicated' *mattah*; on account of windiness &c., one who has become 'insane,' *unmattah*; one affected by a disease; one addicted to gambling; one less than sixteen years of age. By the use of the word *ādi*, 'and the like,' are included those entered into by slaves, who are not independent, or by the aged and the like, and by strangers, not related, excepting those authorised by the father. A transaction such as of a debt and the like, entered into by these, never becomes of force. (32).

\* Page 26.

After mentioning suits which are liable to be reversed, the Author indicates the kind of property which may be restored

## Yājñavalkya, Verse 33.

Lost wealth when (subsequently) recovered should be given by the king to the owner; if (however) he (the

claimant) do not identify it by (supplying) marks (of identification) he is liable to an equal (amount of) fine.

Mitāksharā :—Pranashṭam, *lost wealth*, such as gold &c., what was recovered, adhigatam, by the revenue or police officers &c., and brought over to the king, (that wealth) should be given by the king to the owner, if the owner identify it by (supplying) marks of identification such as the quality, quantity &c. If he do not identify, then he should be fined in an eqnal amount for setting up an untrue claim. This refutes the presumption of ownership which may arise on account of adhigama (finding) being recognised as one of the causes giving rise to ownership.<sup>1</sup>

In this matter moreover, further<sup>2</sup> on the Author lays down the period of time, viz: "What was brought in by the Revenue Officers or the Officers of police as property lost and recovered, the owner may take away within a year; thereafter the king shall take it away." Manu<sup>3</sup>, moreover, has laid down three years as the period: "Property, the owner of which has disappeared, the king shall cause to be kept as a deposit for three years; within the period of three years the owner may claim it; thereafter the king shall take it." There, it shall necessarily be preserved for three years.

If the owner comes within a year, the whole should be returned (to him). Where, however, he returns after more than a year, in that case, after deducting some portion as a preservation charge, the remainder should be made over to the owner. As has been said<sup>4</sup>: "Then the king bearing in mind the law among good men, may take one-sixth part of the property lost and afterwards recovered, or one-tenth, or at least one-twelfth." In such a case in the first year the whole should be given. But in the second, after deducting a twelfth portion, in the third, a tenth, and a sixth in the fourth and in the following years, the remainder shonld be restored (to the owner), and o fourth of the Royal share shonld be given to the finder.

When, however, the owner does not turn up a fourth of the entire property should be given to the finder and the remainder may

1. See e. g. Gantama, X. 39.

2. Yājñ. II. 173.

3. Ch. VIII. 30.

4. Manu. Ch. VIII. 33.

be taken by the king. So says Gautama : " If lost property, the owner of which is not known, is recovered it should be announced to the king. The king should cause a proclamation to be made, and preserve it for one year. Afterwards one-fourth (goes) to the finder,  
 5 (and) the remainder to the king." Here by the use of the word 'a year', the singular number is not stressed, vide the text<sup>2</sup>: " The king should cause it to be kept as a deposit for three years." And even the text<sup>2</sup>: " Thereafter the king shall take it" amounts only to a permission to dispose (it) of after three years if the owner does  
 10 not turn up. Where, however, the owner appears after that (period), even if the property is disposed of, the king should deduct his due and pay (to the owner) an equivalent (amount). This is with reference to gold, &c. As regards cows, etc., the Author states (the law) further on (in the text<sup>3</sup>): " The owner should pay (four) panas  
 15 if the animal has an entire hoof, etc."

### Viramitradya

It has been stated<sup>4</sup> that 'the king should administer justice'; there, not only suits as described above alone should be investigated, but even where there is no defendant, by regard to the result being reached  
 20 by means of the examination of witnesses, or regard being had to the investigation resulting in a penalty consequent upon a defeat, a resemblance of a judicial proceeding, in a case of deposit &c. where the right of ownership is under a doubt, and even in the form of the assertion that 'it is mine', and the exhibition of evidence in substantiation  
 25 of it, in a similar manner; intending this, the Author mentions rules in regard to treasure-trove and the like by means of four verses.

### *Yājñavalkya, Verse 33.*

A *nidhi*, or a *traasura-trova* is wealth buried before and kept permanently. That, moreover, is two-fold, differentiated as deposited  
 30 by self or by one's father and the like, or as deposited by others. Of these, the first *pranasham*, 'lost,' but afterwards *adhigatam*, 'recovered', by the owner or by an officer of the king or any other, *dhanam*, 'wealth,' in the form of the treasure-trove, *dhanine*, 'to the owner' i. e., to the one

1. X. 36-38 The proper reading is अन्तर्दृष्टामिक्ष अभिगाय एते प्रश्नयः । विश्वाय  
राजा संक्षेपम् &c. This is the reading in the original text of Gautama.

2. i. e. Manu VIII. 30.

3. Yājñ. II. 174.

4. Yājñ. II. 1, p. 631, l. 13.

declaring that 'this is my wealth', *nṛpēna deyam*, 'by the king should be given,' if 'by signs' *lingaiḥ* i.e., by means of evidence, *taddhanam vibhārayet* 'that wealth he shouold establish' i.e., shculd prove as his own. *Na chet vibhārayet*, 'if he does not establish' then a penalty equal to the amount in dispute, he incurs on account of his offence in telling a false-hood of that character. 5

### S'ūlapāṇi.

#### Yājñavalkya, Verse 33.

*Prayashṭam*, 'lost wealth,' such as gold &c. when found by the king, identified by the owner (to be his) by marks such as the form, the number, and the like, should be given to him. On an incongruity, 10 however, he shouold be made to pay a fine, equal to the amount. (33).

After laying down the law regarding gold, &c., as to property lost and recovered on the roads or from the toll houses where it lay scattered, now the Author states the law regarding the recovery of gold, &c., which had long been burried in the land, and which last is 15 known as a *Nidhi* (or treasure-trove)

#### Yājñavalkya, Verses 34 and 35.

The king having found a treasure-trove should give half to the twice-born. But a learned Brāhmaṇa finding (a treasure-trove) may keep the whole, as he is the lord of all. (34). 20

If a treasure-trove is found by any other, the king should give him<sup>1</sup> a sixth part. If (however) the information is not given (by the finder) and he is found out, the finder should be made to pay a fine. (35). 25

Mitāksharā :—The king having found a treasure-trove as already defined, half should be given to the

Acquisition of a Brāhmaṇa<sup>2</sup>, and the remainder thrown into the treasure-trove. If, however, a Brāhmaṇa find treasure-trove and he be learned, i.e., accomplished by learning and study, and well-behaved, then he shouold take the whole; since he is the lord of the whole world. 30

1. The translation as given above is in accordance the Mitāksharā.

If, however, the treasure-trove is found, itareṇa, by any other, than either the king or a learned Brāhmaṇa as, e.g., by a Brāhmaṇa who is not learned, or by a Kshatriya or such another, the king should give a sixth of it to the finder and himself take the remainder of the treasure-trove. As says Vasishtha,<sup>1</sup> "A king who finds property the owner of which is not

\* Page 27. known should take it; he should give a sixth part to the finder." Gautama<sup>2</sup> also "Treasure-

trove when found becomes the property of the king; not (however) that which is found by a learned Brāhmaṇa, even a non-Brāhmaṇa finder who announces (to the king) shall obtain one-sixth, so declare some."

The past-participle *anirerita* is (used) in the active voice; he who has not given information and who has been found out, i.e., who has been found out as not having given information even to the king. Whoever, having found a treasure-trove did not inform the king and was found out by the king, should be made to pay the entire treasure found, and also a fine according to (his) capacity.

If, however, the owner of the treasure-trove himself appears afterwards and establishes his ownership by specifying the amount of the rupees, etc., then the king should give him the treasure, (after) taking for himself a sixth or a twelfth part. As says Manu<sup>3</sup>— "From that man who shall truly say with respect to a treasure-trove, 'This belongs to me', the king may take one-sixth or one-twelfth part." The choice as to the (particular) portion is to be determined by reference to the class (to which the party belongs), the time (which had intervened), etc.

### Viramitrodaya.

The Author mentions as to the second

Yajnavalkya, Verses 34, 35.

30 *Rājā*, 'The king,' upon finding a treasure-trove the owner of which is not known, *ardham dvijebhyo dadyet*, 'should give half to the twice-born,' and (the other) half he should consign to the treasury. *Ildudn*, 'learned,' i. e. accomplished by learning and study of the Vedas, twice-

born i. e. a Brāhmaṇa, moreover, having found a treasure-trove, *aśeṣam*, 'the whole' i. e. the entire treasure, *swayam ddadyat*, 'shoold himself take.' Sa, 'he,' i. e. such a Brāhmaṇa, *yataḥ*, 'us', *sarvasya prabhuh*, 'is the lord of all' i. e. of the world.

That says Manu<sup>1</sup>: "Whatever exists in this world is the property of a Brāhmaṇa; on account of the excellence of his origin the Brāhmaṇa is, indeed, entitled to it all. (100). The Brāhmaṇa eats his own food; wears but his own apparel, bestows but his own alms; other mortals subsist through the benevolence of the Brāhmaṇa (101)." (34).

*Itare na*, 'by any other' i. e. by not a learned Brāhmaṇa, *nidhan labdhe*, 'if the treasure-trove is found', *rājā*, 'the king', *śaṣṭhāṁśam dharet*, 'a sixth part he should' take,' from the treasure-trove. 10

The past participle in the *anivedita* is (used) in the active sense. One who has not given information and who has been found as having taken the treasure-trove, should by the king be compelled to pay the treasure and also a fine according to capacity. 15

By the expression *dāpya ita*, 'he must be made to pay,' it has been indicated that he must not be allowed to take even a small portion of the find. The word *cha*, connects this with the last clause and also is intended to include the twelfth 20 part. So says Manu<sup>2</sup>: "The man who makes truly an assertion 'this belongs to me,' from him, the king may take a sixth part or a twelfth part." The twelfth part has a reference to one endowed with qualifications. To this connection Vishnu<sup>3</sup>: "A king, upon finding a treasure-trove, should give half to a Brāhmaṇa and the other half he should deposit in the treasury (36). A Brāhmaṇa finding hidden wealth should take it himself (37). A Kshatriya should make over a fourth to the king, one-fourth to the Brāhmaṇas, and should take a half. (38). A Vaīśya should give a fourth part to the king, a half to the Brāhmaṇa, and should take one-fourth for oneself. (39). A Śudra, moreover, 30 should divide the find into twelve parts, and should give five parts each to the king, and, to the Brāhmaṇa, and take two parts. (40). From one

1. Ch. I. 100, 101.

2. Note the difference between the Mitākṣharā and the Viśmitrodaya in the interpretation of the word *āśeṣam*. According to the Mitākṣharā, after giving one-sixth to the finder. The king should take the rest. According to V. M. the king should take one-sixth. Śūlapāni agrees with the Mitākṣharā.

3. Ch. VIII. 36.

4. Ch. III. 36-41.

who has not reported the find and who has been found, the king should take the whole (41)." Thus the text of Vasiṣṭha viz. "If he finds property (the owner of) which is not known, the king should take it up, and should give one-sixth portion to the finder", has a reference to a 5 Sudra, in pursuance of the text of Viṣṇou. (34, 35).

## S'ūlapāni

Yājñavalkya, Verse 34.

The king having found an ownerless treasure-trove deposited a long time ago, should give a half to the Brāhmaṇas. A learned 10 Brāhmaṇa,<sup>1</sup> however, should take the whole; he need not give a portion to the king. The Author states the reason: since of all kinds of wealth he is the master, as says Manu<sup>2</sup>: "Whatever exists in this world is the property of the Brāhmaṇa; other mortals subsist through the benevolence of the Brāhmaṇa." This also applies in the case of a deposit by others. 15 As says Bhāradwāja: "Upon finding a deposit laid by another, one should take it to the king; every treasure-trove must go to the king, of all except the Brāhmaṇa." (34).

## S'ūlapāni

Yājñavalkya, Verse 35.

20 When a treasure-trove belonging to himself has been found by a Brāhmaṇa who is not learned, or by the Kshatriya and others, according to Nārada: "The king should take a sixth share;" and according to Manu and others, a small portion is to be taken according to the qualification of the finder. For a deposit not belonging to oneself, however, after 25 giving a sixth portion to the finder of the deposit, the remainder the king should take. As says Vasiṣṭha<sup>1</sup>: "If one happens to find an ownerless deposit, the king shall take it up, after giving a sixth portion to the finder. If a Brāhmaṇa finds it, and he is one who carries on his own duties, then the king should not take." When ownerless wealth, as well as 30 wealth the owner of which was known, was not reported, but came to be known by the king, then that wealth as well as a fine, the taker of the treasure should be made to pay. So Nārada: "Even a Brāhmaṇa upon finding a treasure, should inform the king; what is given by him, he may enjoy; he would be a thief if he does not inform." (35).

The Author mentions (the rule) about property taken away by robbers

### Yâjñavalkya, Verse 36

The king should pay the wealth taken away by the robbers (and recovered by him from them) to the people of his country; and if he do not pay, he incurs the sin of the robbed as well as of the robbers.

Mitâksharâ:—Chauraih r̥htam, taken away by the robbers, and conquered back from them. Jânapadâya, to the inhabitants of his country. Whosoever that wealth be, to him should it be given by the king; but, if, i.e., since if, adadat, he do not pay, yasya, whoseso, that robbed wealth may be, he (the king) incurs the sin, tasya, of him, i.e., of the robber. As says Manu,<sup>1</sup> “Property stolen by thieves must be restored by the king to (men of) all classes (varna); a king who uses such (property) for himself incurs the sin of a thief. If after recovering from the possession of the thieves he enjoys it himself then he incurs the sin of a thief.<sup>2</sup> If, however, he neglects the (recovery of) property stolen by thieves then he incurs the sin<sup>3</sup> of a citizen. If after trying to recover property stolen by the thief, he is not able to recover it, then in that case he should pay as much amount from his treasury. As says Gautama<sup>4</sup>: “Having recovered property stolen by thieves, he shall return it to the owner. Or (if the property is not recovered) he should pay (its value) out of his own treasury.” And also, Krishṇadwaipâyana:—“If a king is unable to recover property stolen by thieves, that (amount) should be paid from his own treasury by the king who is (so) unable.”

Here ends the chapter on Special rules of Procedure.

1. Ch. VIII 40.

2. These expressions require an explanation. They supply a good illustration of the terse style (मुक्तात्मा) of the Author: In the first expression by अतेष्ट जनपदाप्नोति, what is intended to convey to the reader is that he incurs the same responsibility and criminal liability as a thief does. While the expression जनपदय उत्तिष्ठाप्नोति ‘incurs the sin of a citizen’, means that he incurs the same responsibility which a citizen does by not assisting or neglecting the recovery of robbed property.

3. X. 46.47.

## Viramitrodaya

In regard to property carried away by thieves, the Author states a spacial rule

## Yājñavalkya, Verse 36.

What was taken by a thief, or property of that kind, after taking it back from the thief—and when that is not possible, even from his own treasury, jānapadiya, 'to the people of his country', i.e., to the inhabitants of his territory, deyam, 'should be given'.

By the use of the word *tu*, 'however', are discriminated the making over to others than the people of his country, and a deduction of a portion for himself according to law. *Hi*, 'and if', i.e., since, that property which was taken away by the thief is not given back to him to whom it belonged as owner, the king incurs the sin of the thief—i.e., the sin of a kind which is incurred by theft.

That says Manu:<sup>1</sup> "Property stolen by thieves must be restored by the king to (one of) all classes (varṇas); a king who uses such (property) for himself incurs the sin of a thief".

To the Mahābhārata also: "If a king is unable to recover property stolen by thieves, that (amount) should be paid from his own treasury by the king who is (so) unable". (36).

Here ends the Chapter on Rules of Procedure in the commentary on the Smṛti of Yājñavalkya

## S'ūlapāṇi

## Yājñavalkya, Versa 36.

What was taken away by the robber, should be restored by the king; since, he to whom that wealth belonged, of him he acquires the sin. If he do not recover that property, he should give from his own treasury. As says Vishnu:<sup>2</sup> "What was taken away by a thief, should be recovered and paid in entirety. If not recovered, from the treasury itself." (36).

Thus ends the Chapter on Judicial Procedure

1. Ch. VIII, 40.

2. Ch. III, 45.

## Chapter III.

## On Recovery of Debts.

After expounding the 'Rules of Procedure' in general and particular cases, the Author now expounds the Sevenfold division Chapter on 'Recovery of Debts' the first of the of the Chapter on eighteen titles of law, beginning with the text:<sup>1</sup> recovery of debts. "An eightieth part is the interest", etc., and ending with the text:<sup>2</sup> "The pledge shall be (allowed to be) redeemed after double the principal has been received out of the produce."<sup>3</sup>

This title of "Recovery of Debts" has seven points (for consideration). (1) The kind of debt which should be paid, (2) the one which should not be paid, (3) by what person should be paid, i.e., by one holding a particular capacity, (4) at what particular time to be paid, (5) and in what way to be paid—in all, five points for the debtor; and for the creditor, two, viz., (6) the mode of advancing a loan as also, (7) the mode of recovering it. This, moreover, has been made clear by Nârada:<sup>3</sup> viz. "Which debt must be paid, and which may not be paid, by whom, where, and in what way to be paid, and the rules of advancing and of recovering (loans) are said to make up the (title) 'Recovery of Debts'".

Of these the Author states the rule regarding the advance (of a loan) by the creditor, as it is the first of all other points of inquiry).

## Yâjñavalkya, Verse 37.

An eightieth part (of the principal) is the interest (allowed) every month when the debt is (secured) by a pledge. In other cases it may be two, three, four, or five per cent, respectively, according to the order and class (of the debtor).

1. Verse 37.

2. Verse 63.

3. Ch. I. 1.

Mitâksharâ:—Mâsi māsi, *every month*, i.e., month by month. Bandhaka is that which is deposited

\* Page 28. as a security, i.e., pledge. That which is (accompanied) by a pledge is called

5 sabandhaka, a transaction with a pledge an eighteenth part is

In a transaction with a pledge an eighteenth part is 10 the interest.

15 In a transaction with a pledge an eighteenth part is 15 the interest. Two, or three, or four, or five (make up the compound word) two-three-four-five. A hundred in which such an interest is given is “a hundred with two-three-four-five.” As per the following rules of grammar viz. “The affixes, mentioned above<sup>2</sup>, have also the sense of an interest, or a

20 rent, or a profit, or a tax, or a bribe given thereby or in that,”<sup>3</sup> “The affix *Kap* (कप्) comes<sup>4</sup> after a numeral when it does not end with शि or शृं”<sup>5</sup> and the rule to be observed here is the one stated in the Grammatical Sûtra I. 1-72 viz. “An injunction<sup>6</sup> which is made with regard to a particular attribute, applies to words

25 having that attribute at the end as well as to that attribute itself.”<sup>7</sup>

1. Pâṇîpi 5-1-47.

2. i.e., Pâṇîpi V. 1-1-46.

3. Pâṇîpi V. 1. 22.

4. e.g. in द्विष्टु the कप् termination.

5. The word मासि (see V. I. 63) is to be read into the Sûtra, so that the whole Sûtra would read by adding, to the portion given above, the following i.e.—“The sense of the affix being that taught hereafter upto V. I. 63.”

6. This i.e. the अद्विष्टु (Pâṇîpi I. I. 72) is a rule of interpretation. When a rule is made with regard to a particular attribute or letter, it also means words having those attributes or letters at their end. Thus under the rule अचो यत् (III. I. 97.)—“The affix यत् comes after a root that ends in a vowel” roots ending in vowels as well as roots consisting of a single vowel are included.

7. For a clear understanding of the bearing of these rules upon the text, mark the following observations: Two compound words द्विष्टु यत्

"Interest upon interest is (called) compound interest ; it is (called) *Kālikā* when it is (payable) per month ; it is *Kārītā* when it is fixed according to the wish (of the parties) ; it is *Kāyikā* when it is in the form of bodily labour" (the stipulation that) 'the interest on this will be taken every month' is (an instance of) a *Kālikā*. This very (species of) interest becomes *Kāyikā* when it is receivable per day and the period is divided by the calculation of days. Moreover, Nārada<sup>1</sup> after stating that "In the *Sāstras* interest is declared fourfold viz. *Kāyikā*, *Kālikā* (periodical interest), another called *Kārikā* (stipulated interest), as also the compound interest (*chakra vriddhiḥ*)"<sup>2</sup> has said :—"Interest<sup>3</sup> at the rate of one *Panya* or quarter of a *Panya* payable constantly<sup>3</sup> and without detriment to the physical health is denoted *Kāyikā* interest. That which runs by the month is termed *Kālikā* (periodical) interest. That interest is *Kārītā* (stipulated) interest which has been promised by the debtor himself. Interest upon interest is called *Chakravriddhi* (compound interest)."

### Sūlapāṇi

The Author states the rules of interest according to law

Yājñavalkya, Verse 37.

Upon a security being taken when a hundred *pamas* are advanced as a loan, an eightieth part i.e. one and a quarter *pama* every month has been explained and solved as श्वस्त्रा श्वस्त्रा श्वस्त्रा &c. (Sk. page 28 lines 4-5). For this the authority is नृपत्वम् etc (V. I. 47.) under which rule the affix is added to a word in the first case (श्व) in construction. The sense of the affix is that of a locative (श्वस्त्रम्). Then the श्व ending in श्वस्त्राश्वस्त्रा is explained by the rule श्वस्त्राश्वः &c. (V. I. 22.). And lastly by the नृपत्वम्, the application of the first rule is extended to all the members of the compound, and thus is brought out the meaning of this compound word as explained in line 6 on page 28.

1. Ch. I. 102-104.

2. श्वस्त्राश्वस्त्रा श्वस्त्रा is the reading in Dr. Jolly's edition.

3. श्वस्त्रा—(S'ns'vat)—has the force of constant repetition. Here it may even be rendered as "every day" (see line 9.) कायाविद्विदी—(Kāyāvirodhini) The translation adopted here is in accordance with the gloss of Bālambhaṭṭi (see Bālām. Sk. p. 54 I. 14-15) Bhṛaspati & Vyāsa (see Sacred Books of the East &c. XXXIII p. 67 note).

Dr. Jolly, however, translates it as—"Without diminishing the principal", and the translation appears to be based on the following gloss by Asabhyas, "त्वं कायोदये । .....द्रव्यादिकैः द्रव्यकापः नामादिरेष्वनि मुख्यादकाप्यादिरात्रिः ।"

becomes the interest. *Anyathā*, 'otherwise' when the money is advanced without security, two, three, and four *pavas* shall be the interest payable by the Brāhmaṇa and others in the respective order.

5 Vyāsa states a special rule: "In the case of a loan with security monthly interest is declared to be the eightieth part; a sixtieth part when there is a surety; and two per<sup>1</sup> hundred, on a loan without any security."

Bṛhaspati<sup>2</sup> mentions the kinds of interest: "The *Kāyikā*, (by bodily labour), the *Kālikā*, (periodical interest), and next, the wheel interest—*Chakra vrddhi*—(compound interest), the *Kdrītā* (or stipulated interest), the 10 hair interest—the—*Sikhā*—and the interest by enjoyment *Bhoga*." *Kāyikā* 'by bodily labour', e.g. by milking and driving cattle, and such other labour; *Kālikā*, 'periodical' e.g. every month. Interest upon interest is wheel or compound interest; that which was stipulated by the debtor himself is *Kdrītā*; the hair-interest is that which is taken every day; *Bhoga*, 15 'by enjoyment' such as the rent of a house, profit, or the fruit of crops &c. Bṛhaspati: "Hair interest, bodily interest, and interest by enjoyment shall be taken by the creditor so long as the principal remains unpaid." (37).

The Author mentions other varieties of interest by reference 20 to particular (classes of) debtors

### Yājñavalkya, Verse 38 (1.)

Persons (usually) travelling through forests should pay ten per cent, and those who travel by sea twenty per cent.

25 Mitākṣharā :—*Kāntāra* means a forest; those who go there, are *kāntāragāḥ*, persons travelling through forests. Those who borrow money by interest and enter dense forests which involves<sup>3</sup> danger to life and property should pay ten per cent and those, who go to the sea, *samudragāḥ*, twenty per cent., also per 30 month.

The meaning is this: The creditor should take ten per cent from those who go to the sea, as there is a danger of the loss of the principal also.

1. i.e. sixtieth part.      2. Ch. XI, 5, 6, 7.      3. Ch. XI, 11.

1. Lit. which creates an apprehension about the destruction of life and property.

Now the Author describes stipulated (Kâritâ) interest

## Yâjñavalkya, Verse 38 (2)

10

Or all should pay what they had agreed to among all classes.

Mitâksharâ :—Sarve vâ, or all, Brâhmaṇas and other debtors whether secured or unsecured, swakrtâm, what they had agreed to i.e., promised by them, vryddhim, sarvâsu jâtishu dadyuh, interest among all classes, should pay. Sometimes interest is payable even when not stipulated for. As says Nârada<sup>1</sup>: "No interest shall ever be charged on friendly loans, unless there is an agreement to that effect. Even if there be no agreement, interest accrues on such loans after the lapse of half a year."

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For one, however, who goes to another country after taking a loan for use, Kâtyâyana<sup>2</sup> has laid down a rule thus :—"If one after obtaining a loan for use without returning it goes to foreign lands, that loan of his will be charged with interest after the lapse of a year." For one, moreover, who after obtaining a loan for use and without returning it, even when he was asked, goes to a foreign region, the same Sage<sup>3</sup> has laid down the rule viz. "If, one goes out to a foreign region without returning a loan which he had obtained, and which was demanded back, that loan becomes chargeable with interest after the lapse of three months."

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He also, who while remaining in one's own country, does not return a loan for use when asked for, should be made to pay interest by the king from the date of the demand. As has been said<sup>4</sup> "He, however, who while remaining in one's own land, does not return a loan for use when asked for, should be made to pay interest from that time, even though it was not stipulated and he be unwilling."

1. Ch. I. 108.

2. Verse, 502.

3. Verse, 503.

4. By Kâtyâyana, Verse 504..

Nārada<sup>1</sup> has laid down an exception in the unstipulated interest, viz: "The price of a commodity, wages<sup>2</sup>, a deposit, a fine which had been fixed, a gift without consideration, a gambling debt, none of these bear interest unless specially provided for." 5 *Avivakṣhitāḥ*, unless specially provided for, i.e. unless stipulated for.

### 8'śūnpāṇi.

#### *Yājñavalkya, Verse 38.*

By a mountainous road or by the sea when one goes out for trade, these when there is no security, should pay ten *pānas* and twenty *pānas* respectively. On account of the contingency of the loss of the principal itself is the payment of larger interest.

The Author mentions another alternative to the rule stated in the text: "In the order of the Varnas, two, three &c." *dadyurnvīt*, 'or should pay &c.'

#### *Yājñavalkya, Verse 38A.*

Interest upon interest is compound interest; interest payable every month is periodical interest (*Kālikā*). When stipulated by himself, it is stipulated interest (*Kārikā*). The (*Kāyikā*) is by bodily labour.

This is explained by the statement itself. In some books this 25 verse is not stated.

### \* Page 29.

Now the Author mentions special kinds of interest by reference to particular things. The interest on the females of beasts is their progeny itself.

#### *Yājñavalkya, Verse 39 (first quarter.)*

In the case of female beasts the interest is their progeny itself.

*Mitāksharā* :—Of the females of beast, *santatireva*, *progeny itself*, is the interest. Such a transaction would be possible 30 in the case of one who is unable to maintain the female beasts and who wishes them to be well-fed and to bear progeny. The creditor will have the milk and labour.

1. Introd. II. 36.

2. यज्ञि, is a better and correct reading. The reading in the print viz. यज्ञि is not correct.

3. *Yājñavalkya* II. 37.

When something is given as a loan and the loan has remained over for a long time even without recovering any interest, what is the maximum limit for the accumulation of interest in several kinds of properties? (Anticipating this question) the Author proceeds:—

## Yâjñavalkya, Verse 39 (second quarter.)

5

The utmost limit for (the accumulation of) interest is eight-fold in the case of a fluid, and fourfold, threefold, and twofold in the case of cloth, grain and gold respectively (of the principal loan advanced).

Mitâksharâ :—*Rasasya*, of a fluid, i.e., in the case of oil, ghee, etc., upon which no interest has been

Accumulation in received, and the loan has remained standing for the case of fluids etc. a long time, the interest as agreed to by the parties would be accumulating—such accumulation would be *ashṭaguṇā*, eightfold, *parā*, utmost limit, i.e., cannot accumulate beyond that. Similarly of cloth, grain, and gold, *wastradhânya-hiranyânâm*, would respectively be fourfold, threefold, and twofold the utmost accumulation.

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Vasiṣṭha,<sup>1</sup> however, has mentioned a threefold increase in the case of fluids—"Gold (taking) double (its value on repayment and) grain trebling (the original price). (The case of) fluids<sup>2</sup> has been explained by (the rule regarding) grain, as well as (the case of) flowers, roots and fruit. In the case of these three things which are sold by weight the increase will be eightfold."

20

Manu<sup>3</sup> on the other hand, in the case of grain and also flowers, roots and fruits has mentioned a fivefold increase. "On grain, fruit, wool or hair (and) beasts of burden it does not increase more than five times (the original quantity). *Sâdah*, grain, the produce of the field, such as flowers, roots, fruits, etc.; *lavah*, wool or hair, the wool of a gnat; the hair of the *Chamari* Cow, etc.; *wâhyah*, beast of burden, the ox, horse, etc., i.e., the accumulation of interest in the case of grain, fruit, wool, or hair and beasts of

25

30

1. Ch. II. 44-47.

2. Dr. Buhler translates *rasa* (*Rasâh*) as flourishing substances.

3. Ch. VIII. 151.

burden does not extend beyond a fivefold (of the principal). There too, the rule should be applied after considering the capacity of the debtor as well as the state of things at the time, such as famine, etc.:

This<sup>1</sup> (rule) moreover is to be understood as applicable in the case of one transaction and one payment. If there are separate transactions with different persons, or even if the person is the same but there are different transactions on more than one occasion, gold, etc., would indeed increase as before, even beyond the twofold and other limits. And even in a single transaction, when the interest is recovered daily, monthly, or every year, and thus it is not<sup>2</sup> possible that the amount payable by the debtor might become twofold, the amount as made up of the interest recovered before, does certainly increase beyond (the) twofold (limit). As says Manu<sup>3</sup> "In money transactions interest paid at one time (out by instalments) shall never exceed the double (of the principal)." "Recovered<sup>4</sup> at one time" is also another reading. *Kusida* is money utilised for accumulation. Increase of that is *Kusida-Vyddhiḥ*; (such an increase) does not exceed i.e. does not rise beyond the double, if paid at one time, i.e. let at one time. It exceeds beyond the double when the dealings are with different persons and give rise to separate transactions.

In the case where the reading is, "recovered<sup>4</sup> once", it should be explained to mean that the interest would exceed the double when recovered in instalments from the debtor every day, every month or every year. Moreover it has even been said by Gautama<sup>5</sup>.—"If in a transaction the loan remains outstanding for a long time, the principal may be doubled." (Here) by the use of the singular number in "a transaction" (*prayogasya*) an increase beyond the double appears to be intended in the case where the transactions are different. By the use of the expression "outstanding for a long time" (*chirasthane*) an increase beyond the double has been indicated in the case where the interest has been recovered in small quantities<sup>6</sup>. (39)

1. See *Digdasa vs. Rambhadra* 20 Bom. 611-613.

2. Read कृपासंवर्त् for कृपासंवर् 1. 20 page 29 see Bālambhaṭṭī Sk. P. 57. L. 1. 3. Ch. VIII. 15. 4. व्युद्धिः. 5. Ch. XII. 31.

6. In other words it does *solid capitalisation* of interest see *Sukhlal vs. Bapu* 24 Bom. 305.

## Viramitrodaya

Now, of the Chapters on *Vyavahāra* to be expounded, following Mann and others such as in the text "of these, the first, the Recovery of Debts", first in regard to the recovery of Debts, technically dealt with by Nārada" thus: "A debt which must be paid, and that which may not be paid, by whom, where, and in what way to be paid, and the rules as to the advance and the recovery of loans, are said to make up the (title) 'Recovery of Debts, (1) (and) It is called *kusida*'; because by it is their living (secured) by the money-lenders. (98)" The Author points out the rules of adjustment by the end of the Chapter. There, first the Author States the (rules as to) interest

Yājñavalkya, Verses 37, 38, 39.

*Sabandhaka rye*, 'in a debt by a pledge', the amount invested such as gold, &c., will be liable for two, three, four and five per hundred, respectively in the order (of the classes). Therefore the result is that by a Brāhmaṇa debtor who has taken a loan of a hundred of gold, &c., with a pledge, should he paid every month two of gold, &c.; by a Kshatriya, three of gold, &c., by a Vaishya, four of gold, &c., and by a Śūdra, five of gold as interest to the creditor. Similarly also, by a parity of reasoning, it should be understood that in a debt with a pledge, where an eighteenth part is the interest, for a hundred of gold and the like, less by two māṣas, interest should be at two (per hundred) and onwards.

"Even" when there is no pledge, but there is a surety, when it is without transfer, two per cent, per month has been stated". *Sāshṭhabhdgah*, 'together with its eighth part; of the eighth part, of the eightieth part'; together with that, the eightieth part. Here also in the case of a Kshatriya debtor and the like a larger rate is to be understood, by a parity of reasoning.

*Kutidragdā*, 'travelling through forests' for a larger profit; debtors who are in the habit of trafficking through forests and the like places

1. Ch. I. 1.

2. Ch. I. 98. Lending money at interest. Bṛhaspati (XI. 2) derives this word thus: कुटितात्सीदृष्टिक निरिशेषः प्रयोगः । चतुर्थं पादपाणं कुटिकृष्टःऽनः । कुटिः ॥ which however is characterised by Dr. Jolly as fanciful. The rule of the Mahomedan law, however, laying a ban against interest is expressive of the same sentiment.

3. For this text, no Author is quoted; nor is the text quoted in full. From the comments of Mitramīśra, the word कुटिक appears to be in the omitted portion. This text has a resemblance with the text of Vyāsa which runs thus: सूक्ष्मं पाणं आशीतः । एषो पाणः सूक्ष्मः । निपाणे द्विक्षतं न्यासलाप बरादृः ॥ (see Vyavahāra Mayōkha p. 75 l. 3).

shall pay *s'atam daśakam*, 'ten per cent.', i.e., hundred plus ten. Those of the sea, however, with the object of making big gains being in the habit of journeying over the seas, twenty per cent., i.e., twenty plus one hundred. should pay every month. Thus the conclusion is that for a hundred of gold, those resorting to the forests should pay ten of gold, and the seamen, twenty of gold.

Where, however, a higher or a lower rate of interest than what is stated above has been agreed to between the debtor and the creditor, there, that interest, *sarve*, 'all', the Brāhmaṇa and other debtors,  
10 *sārvaduṣu jātishu*, 'among all classes', as far as the mixed classes of creditors should pay.

Of the hypothecated beasts such as the cow and the like, or women, such as a female slave, &c., progeny itself is the interest for the mortgagor of the cow, &c. Here according to Batnīkara it should be  
15 understood that in the case of the mortgagor who is unable to maintain them, the maintenance and the progeny of the cow, &c., and the female slaves, etc., is expected, and of the mortgagee the milk and the service are incidental to the pledge. Others, however, explain that in the case of the cow, the female slave, etc., deposited as a pledge, the owners of the  
20 cow, etc., the debtors should pay the interest, and when that is not possible the progeny itself is (to be regarded as) the interest.

Now the Author states the highest rates of interest: Of a liquid, such as clarified butter, etc., when pledged as for a debt, when remaining over for a long time, the interest shall increase upto eight times. By the  
25 word *para*, 'highest', is indicated that in the case of an increase in the fields, etc., even when it is possible to measure it, it is excluded. Similarly, onwards, of the cloth fourfold, of the grain three-times, and of gold two times is the highest increase.

Here, in connection with the portion relating to increase,  
30 Brhaspati<sup>1</sup> says: "Interest has been declared to be of four sorts; by others it is stated to be of five-kinds; and by others still, it has been declared to be of six kinds. Learn these by their characteristics: *Kdyikā* (bodily interest); and the *Kālikā* (periodical interest); similarly also *Chakraṛddhiḥ* (compound interest) is another; then the *Kṛiti*<sup>2</sup> (stipulated interest), *S'ikhaṛddhiḥ* 'hair interest', and similarly also the *Bhogalābha*, interest by enjoyment. Of these, the characteristics and

1. i.e. although the object pledged, may actually increase more than eight-fold, and although it is possible to assess such increase, any higher amount is excluded by this rule.

2. Ch. XI. 4, 5.

other details, out of fear for prolixity, are not being expounded here, but should be followed in other Smṛtis<sup>1</sup>.

Here interest at the eightieth part and the like rate has been stated to be legal interest, since Manu<sup>2</sup> has stated : “By taking two or three per cent, one does not become a sinner<sup>3</sup> for gain.” By *svakṛtām*, ‘what was agreed to by himself’, there will not be a higher interest than what was stipulated for. That also is legal. More, however, would be against the law.

Hārita also, “For twenty-five *purdṇas*,<sup>4</sup> the interest for a month is eight *panas*<sup>5</sup>; thus it builds up for two months or four months until it reaches the double, where it stands; this is legal interest; by this, one does not swerve from the law,” ‘reaches the double’, i.e., becomes double; ‘where it stands’, i.e., does not increase more than that. The legality is in regard to the aforesaid interest always for *Vais'yas*. The word *ādi* indicates that it holds in the case of others also.

Compound interest and the rest are certainly illegal. So says Bhṛhaspati<sup>6</sup>: “The use (of the pledge) after twice (the principal has been realised), and the compound interest also which is exacted, and also the original principal together with interest, that is usury, and is reprehensible.”

In regard to the highest interest, Manu<sup>7</sup>: “In many transactions, interest paid at one time, shall never exceed the double (of the principal); on grain, fruit, wool or hair (and) beasts of burden it must not exceed five times (the original principal).” ‘Fruit’, i.e., the crop. ‘Wool or hair’, what may be cut, sheared, such as hair, other than those of the sheep. “For gems, pearls and coral, for gold and silver, for the products of fruit, or of an insect, or for wool, the interest stops when it doubles the debt”, vide the text of Kātyāyana<sup>8</sup>: “*Kaiśām*, ‘of insect’, i.e., produced from an insect.

Gautama<sup>9</sup>: “Interest on products of animals, hair, on products of a field, and on beasts of burden, (shall) not (be) more than five times

1. Note e. g. the following from Bhṛaspati XI. 6, 7, 8.  
कापिका कर्वसंदुका मासप्राता तु कालिका । वृद्धेष्टिरकृद्विः कारिता स्फूर्णिना हृता ॥  
प्रायर्ह एवते या तु शिवापृद्वितु या सृता । एषाचेतः दाः सेषाद्वोपाकामः सर्वानितः ॥  
शिवेष इति नियम शिवउद्दिष्टिभित्ते । युल दत्ते तपेषेषा शिवापृद्वितु या सृता ॥

2. Ch. VIII. 143.

3. Does not expose himself in the charge of usury.

4. & 5. Both are coins, severally valued at 80 cowries and otherwise.

6. Ch. XI. 12.

7. Ch. VIII. 151.

8. Verse, 510.

9. Ch. XII. 33.

(the original)." "Products of animale", other than ghee, such as milk, etc.

5. "For all sorte of oile, and for the different kinds of spirituous liquors, and on clarified butter, the interest has been declared to be octuple, as also for molasses and salt" vide the text of Kātyāyana".

Brhaspati<sup>1</sup>: "On precious metals, the interest may make (the debt) double; on clothes and baser metals, treble; on grain, quadruple has been declared; so also on vegetable products, beasts of burden, and wool or hair". "Vagatala products", products of the field, 10 other than corn, such as fruit, etc. Also<sup>2</sup>: "It has been stated to be quintuple on pot-herbs; sextuple on seeds and sugar-cane; and on salts, oils and spirituous liquore, the interest has been stated to be octuple; also likewise on raw sugar and honey, if the transaction be of long-standing."

15 In the case of corn, the mention of a double and various other rates is to be determined by regard to the price (into moosy). Thus, at the time of the advance, before the appearance of the crop a particular kind of price, if after the appearance of the crop it is reduced a little, then double, in case it is reduced even more than that, treble, further 20 more than that, quadruple, and further on, at the utmost reduction, quintuplia, it becomes.

However all this statement about the increase of interest is by weight only, in accordance with the text of Hūriti: "In course of time, double the quantity of grain increases as if treble." Or, in the order of the varṇas are the four kinds of increase to be adjusted. According to 25 the Sights: "If the grain becomes treble, according to the time and prosperity". In the case of beasts of burden, etc., by regard to the differences in the price, time, and the place, the different rates of interest are to be settled. Thus enough of prolixity.

30. Now the prohibitions regarding interest<sup>3</sup>: "The price or value of a commodity, wages, a deposit, a fine, what has been usurped," etc. What has been idly promised, and what has been won at stakes at dice; these do not yield interest, except under a special agreement (to that effect)", 'a commodity', i.e., a salable commodity; 'wings',

1. Verse, 511.

2. Ch XI. 13.

3. Ch. XI. 14, 15.

4. Nārada II. 36.

5. अनिष्टारिक्षम् other readings are (1) अनिष्टःअर्थः—'whist has been abandoned (by one and found by another); Dr. Jolly's edition (2) अनि मरुष्टः (a fine) which has been ordained (V. Mayūkha).

i.e., salary; 'usurped', i.e., obtained by fraud, deceit, etc.; 'an idle promise', a donation without regard to dharma; 'by dice', in the course of gambling what is staked; these, unless specially agreed upon, i.e., where interest has not been determined upon, do not increase.

*Kātyāyana*<sup>1</sup>: "On hides, crops, wines, and one's gambling debts, price of commodities, always in all these, and on the bride-price of women, there can never be interest; as also on debts incurred as sureties". 'Incurred as sureties', for a surety made liable for payment on account of suretyship.

*Sāṃkṛta*: "No interest can be charged on woman's property, on profits, and on a deposit remaining ambiguous, also for a suretyship, if not specially stipulated". *Vyāsa*: "Suretyship, a pledge which has been fully enjoyed, (and) money not accepted even though tendered, do not carry interest against one who has approached; (as also) a fine, and a bride's price which had been promised". 'Of one who has approached', i.e., of the debtor who is under the control of the creditor—which the Author himself states hereafter by the text: 'When tendered, does not accept, etc.' (37, 38, 39).

### S'ūlapāni.

#### *Yājñavalkya, Verse 39.*

When a she-goat and the like, or a female-slave and the like, are pledged as security, and no other interest is possible, their progeny itself is the interest. In the case of oil &c., when pledged for interest, the utmost interest is octuple together with the original i.e. the additional interest. In the case of clothes &c., in the order of enumeration, quadruple, treble, and double is the utmost interest.

As to the text of *Bṛhaspati*<sup>2</sup>: "On gold, the interest may make double; on clothes and base metals treble; on grain, it is stated to be quadruple, and so also on edible plants, beasts of burden, and wool or hair", that is to be explained, by regard to a long standing loan and a loan of short duration. *Śaddh*, 'edible plants' i.e. the fruit of trees &c. *Wdhyo*, 'beasts of burden,' such as a bullock and the like. *Lavah*, 'hair,' such as the Chāmara &c. (39).

Rules regarding loan transactions have been laid down (above). Now follow the rules regarding the recovery of property advanced as a loan

1. Verse, 505.

2. *Yājñ. II. 44.*

3. Ch. XI. 13.

## Yâjñavalkya, Verse 40.

One (a creditor) would not be blamed by the king for trying to recover an acknowledged debt; and if the debtor complain to the king while the debt is being recovered from him, he should be fined and made to pay (back) the loan.

5 Mitâksharâ :—Prapannam, acknowledged i. e. money admitted by the debtor, or proved by means of witnesses &c; sâdhayan, trying to recover, i. e. a creditor recovering by Dharma 10 and such other means; nṛpaterna vâchchyah, would not be blamed by the king i. e. will not be prevented.

The Dharma and other means have been pointed out by

Manu<sup>1</sup>: “By moral suasion, by a suit at law,

\* Page 30, by deceit, or by starvation<sup>2</sup>, a creditor may 15 recover property lent, and fifthly also by force.”

By moral suasion, Dharmena, i. e. by affectionate words and a straight talk. By a suit at law (Vyâwahâreya) i.e.

Means of recover- by such means as witnesses, documents &c. By ing a loan advanced. deceit (chhalena) e. g. by taking ornaments &c. 20 under the pretext of some ceremonial celebrations &c. By starvation (acharitena), by abstaining from meals. By the fifth, viz. by force i. e. by imprisonment with iron fetters &c. (i. e. to say) money advanced for accumulation (of interest) should be recovered to oneself by these means.

25 By saying “For trying to recover an acknowledged debt” the Author indicates that he should be prevented by the king, from recovering a debt which has not been acknowledged by the debtor.

1. Ch. VIII. 40.

2. आचरितेन च is another reading. Dr. Buhler translates it as a customary proceeding, which he describes as—killing one's (?) wife, children, and cattle and sitting at the debtor's door, or by the creditor's starving himself to death. This is based on the following text of Bhaghaspati cited by Kulluka:—“दारुप्रयत्नहन्। इत्या दापोदेशनम्। यत्तर्वा काप्यत्तर्वा रो तदाप्यत्तर्वा चैतुच्यते”॥ It will be clear that this is the process of silting Dharpa or making the Trâgî and it is doubtful how far it deserves the exalted name of “A customary procedure.” In this view आचरितेन = अमोजनेन (by starvation) is a better and more expressive reading.

This very thing has been made clear by Kātyāyana<sup>1</sup> thus : "A creditor who harasses a debtor who is demanding a trial, shall forfeit his claim and pay an equal fine".

Where, however, a claim has been (made to be) admitted by Dharma and other means, and if then while the amount is being demanded or recovered, the debtor goes to the king and complains against the creditor for trying to recover his due, that debtor becomes liable to be punished with a fine according to his capacity ; and, moreover, he is made to pay the amount to the creditor. The modes of compulsion by the king have been thus indicated:<sup>2</sup> "The king should make a Brāhmaṇa pay the creditor only by gentle persuasion, others according to the usage of the country. The wicked should be made to pay by compulsion. An heir and a relative also should be made to pay by recourse to deceitful tricks". The text<sup>3</sup> "If the debtor complain to the king while the debt is being recovered", should also be understood as a counter-illustration of the text: "In a way which is a violation of the (law of) Smṛtis and usage."<sup>4</sup> (40)

### Viramitrodaya.

Now the Author describes by four verses the process of recovering debts.

#### Yājñavalkya, Verses 40.

*Prapannam*, 'acknowledged', i.e., admitted by the debtor; *artham*, 'debt'; *sādhyan*, 'trying to recover'. "By moral suasion, by a suit at law, by artful management, or by starvation, a creditor may recover property ; and fifthly also by force" by the methods as thus stated above by Maṇu,<sup>5</sup> when recovering back, the creditor, *nṛpater na vāchyo bhavet*, 'should not be blamed by the king'; i.e., will not be prevented by the king.

*Sādhyamdnah*, 'while the recovery is being made', i.e., by the method stated being applied against him, with a view to ward it off. *nṛpam gachchhan*, 'going to the king', the debtor when not

1. Verse, 569.

2. By Kātyāyana, Verses 587, 588 ; other readings are, प्राप्तानं स्वामिन्... ; लोकेन्द्रं सुदर्शं पापि उत्तेरेऽप्याप्येत् ॥ ५८७ ॥ विजः कर्णफलेष शिलिनप्राप्तवीद्गुः । देशाचारेण दाया: सुख्यात् संवीक्ष्य दप्यन् ॥ ५८८ ॥

3. Yājñ. II, 40.

4. Yājñ. II. 5. (See p. 645, ll. 19-20).

5. Ch. VIII. 50.

Incapacitated should be fine and should be compelled to pay the amount to the creditor. By the use of the word *cha*, 'and', is added that even though without making a complaint to the king, he does not pay the amount through torture, etc., the debtor should be compelled to pay 5 the amount, and should be punished also. (40).

Sūlapāṇi.

Yājñavalkya, Verse 40.

While a creditor is trying to realize an admitted claim, if the debtor complains to the king, he should not be charged thus viz. "How 10 do you do this?" When the debtor is being compelled by force, and he complains to the king, then he should be compelled to pay the amount to the creditor, and the penalty should be taken by the king himself. (40).

When several creditors appear simultaneously, against a debtor who is one only, in what order should he be made to pay by the 15 king? (Anticipating this question) the Author says:—

Yājñavalkya, Verse 41.

A debtor should be made to pay his creditors in the order of the receipt of the loans; after paying off a, Brāhmaṇa (creditor), then alone the ruler of men (*should be 20 paid*).

Mitāksharā:—When the creditors are of the same class, the debtor should be made to pay, by the king, the creditors in the same order in which the loans were taken. When, however (the creditors) belong to different classes, the Brāhmaṇa (should be paid) 25 first, and then the rest in order. (41)

Viramitrodaya.

When there are several creditors, in what order should he be made to pay the debt? So the Author says

Yājñavalkya, Verse 41.

Amoung creditors of different castes, first having given to the Brāhmaṇa, although incurred after, that of the Kshatriyas, and thus circumstanced he should be made to pay the debt to a Vaisya. There also, the especial point, by a parity of reasoning, is that after paying the Vaisya, then the debt of the Śudra should be ordered to be paid. Of a

learned Brāhmaṇa, as also of a king the debt should be paid even without paying any other debt excepting that of a Brāhmaṇa.

That says Kātyāyana<sup>1</sup>: “But when there are several debts, whatever is incurred first, should be paid first, but that owing to a king should be paid after that owing to a learned Brāhmaṇa (514). Where several loans are incurred on the same day, in such a case one should put the debt on an equality, as far as the acceptance, maintenance, and profit are concerned; otherwise, however, in the order, (513). When a creditor established that a particular commodity was encumbered with his money, that money should be paid by the debtor to him alone and not otherwise (515)”. The king’s debt should be paid even before that of the learned Brāhmaṇa, having regard to the order stated in the text<sup>2</sup>. (41).

### Sūlapāpi.

#### Yājñavalkya, Verse 41.

When there are several creditors, the debtor should be ordered to pay the debts in the order of their acceptance. When the Brāhmaṇa and the Kṣatriya claim together, the Brāhmaṇa’s should be paid (first) although incurred later, and afterwards should be paid those of the Kṣatriy় and others. (41).

When, however, a creditor is weak and unable to recover an acknowledged claim by Dharma and such other means, and the amount is recovered (for him) by the king, in such a case the Author mentions a fine for the debtor and payment of costs by the creditor 20

#### Yājñavalkya Verse 42.

A debtor should be made to pay by the king to himself ten per cent of the amount recovered; and a creditor who has won his case should be made to pay five per cent. 25

Mitaksharā :—Adhamarṇikah, the debtor, rājñā, by the king, sādhītāt, of the money recovered, from the amount acknowledged; dasakaṁ s’atam, ten per cent; dāpyah, should be made to pay. The king should take from the debtor in the shape of a fine, a tenth portion of the amount recovered from the acknowledged amount. This is the import. 30

1. Verses, 514, 513, 515.

2. This remark is not intelligible, for the वाचना is quite the reverse. The reading should be अविद्यय पधात् and not अविद्यापात्, as it is.

5 A creditor, however, prâptârthaḥ, who has won his case, dâpyaḥ, should be made to pay, panchakam s'atam, five per cent, in the form of costs. The meaning is that the king should take a twentieth portion of the amount recovered by way of costs. In the case of a realisation where the debt is not acknowledged, the distribution of fine has been indicated in the text:<sup>1</sup> "Where, upon a denial (by the defendant) a claim is proved, etc." (42).

### Viramitrodaya.

When even an admitted debt the creditor is unable to recover, and if he recovers through the king, then a twentieth part should be taken by the king from him; while stating this itself, the Author states the amount of the fine for the aforesaid debtor

Yâjñavalkya Verse 42.

15 Râjñâ, 'by the king', addhitâ, 'of recovered', i.e., made to pay, daśakam s'atam, 'ten per cent', in himself, the debtor should be compelled to pay. In short, if one hundred gold are recovered, ten gold should be compelled to be paid. The creditor also who has incurred his claim should be made to pay to himself by the king five per cent, that is to say, for a hundred of gold, five of gold should be caused to be paid.

20 By the word *tu*, 'however', is separated the payment first to the creditor when obtained. By the word *api*, 'even', if penalty do not exist as a motive cause, it is suggested that the payment is meant as indicative as a means (of the recovery). At some places, the reading is *ki*. There also the same is the sense. (42)

### S'ulapapi

Yâjñavalkya, Verse 42.

If the debtor who in the court having denied the claim by declaring "I do not owe", afterwards admits, he should be compelled to pay to the king at ten per cent from the established claim as a fine. (42).

30 The rule as to a wealthy debtor has been mentioned. Now the Author mentions a rule in the case when the debtor is poor

Yâjñavalkya, Verse 43.

An insolvent debtor of a lower class should be made to work for his debt; a Brâhmaṇa insolvent, however,

1. Yâjñ. 11. 11. (See p. 656. 1. 33-34.)

should be made to pay by instalments according to his gains.

Mitākṣhara :—A Brāhmaṇa creditor and others (belonging to superior classes) should, for a debt, ṛnārtham,  
 About a pauper i.e., for the discharge of a debt, cause the debtor  
 debtor of a lower class such as the Kṣhatriya and others  
 who has become parikṣhīnam, insolvent, i.e.,  
 moneyless, to do their usual karma, work, i.e., agreeably to (the  
 usage), kārayet, should be made to do, of their caste and without  
 detriment to (the interest of) their family. A Brāhmaṇa, however, if  
 insolvent, i.e., moneyless, should he made to pay, s'ānaiḥ s'ānaiḥ,  
 by instalments, yathodayam, according to his gains, i.e. according  
 as may be possible.

\* Page 31.

Here the reference to a lower class is indicative also of an equal class; and therefore a debtor of an equal class also, if insolvent, should be made to do the work which is proper for him. The mention of a Brāhmaṇa is also indicative of the superior class, and therefore Kṣhatriyas and others though insolvent should be made to pay their Vais'ya and other creditors (of a lower class), by instalments and according to their ability. This very thing has been made clear by Manu:<sup>1</sup> “Even by personal labour shall the debtor make good (what he owes) to his creditor, if he be of the same caste, or of a lower one; but a (debtor) of a higher caste shall pay it gradually.” The meaning is that the debtor should by his conduct so transform himself into a position that the distinction of a debtor and creditor would become extinct. (43)

#### Viramitrodaya.

The Author states a rule in regard to a poor debtor

Yājñavalkya, Verse 43.

Hinajātīm, ‘of a lower class’, i.e. not of a higher caste than that of the creditor, such a debtor parikṣhīnam, ‘insolvent,’ i.e. money-less, with a view to the liquidation of the debt, the creditor should cause karma, ‘work’ as desired by him, such as agriculture,

service &c. Kdraye't, 'should cause to be done.' Brdhamapastu, 'a Brāhmaṇa' debtor 'however,' although 'insolvent' parikshināḥ, yathodayam 'according to his gains' i. e. according to the acquisition of wealth, s'ānāś, s'ānāś, 'by instalments' i. e. should be made to pay even in small dribelets so as not to be detrimental to the maintenance of his family and such other necessary duties, and even if he be equal in caste to the creditor, he should not be made to do work.

This is only Indicative. One higher than the creditor, such as a Kshatriya &c., should also, when impoverished, be made to pay by small instalments, as the reason stated by the Author for causing work to be done is his belonging to a lower caste, and vide this text of Kūtyāyana<sup>1</sup> also: "Should make the Kshatriya, Vaisya and Sudra of the same caste as his or of a lower caste make payment by work." Here, moreover, the liquidation of the debt by work is to be understood. (43)

## S'ūlapāñi

Yājñavalkya, Verse 43.

One of a lower caste, as compared with that of the creditors, should be made to do work appropriate to his caste. A Brāhmaṇa however in a similar condition should be made to pay as may be possible without detriment to the maintenance of the family. As says Manu<sup>2</sup>: "Even by personal labour shall the debtor make good (what he owes) to his creditor if he be of the same caste or of a lower one; but one of a higher class shall pay it gradually." Here, 'of the same class' signifies one other than a Brāhmaṇa. (43).

## Yājñavalkya, Verse 44.

When tendered, if a creditor does not accept back his amount lent, and if the same is deposited with a third person, it will not carry interest from that time.

Mitāksharā:—Moreover, dhanam, an amount, prāyuktam, lent, at interest; diyamānam, being Money deposited tendered, by the debtor, if the creditor, out of a third person greed for interest, na gr̄hṇāti, does not accept, bears no interest. and if the same is deposited in the hands of a third person by the debtor, then tataḥ, from that time,

i.e. after the deposit, *na vardhate*, it does not bear interest. If, however, even if deposited he does not give when demanded, then it carries interest as before.

**Viramitrodaya.**

By way as it were of stating an exception to the law of interest 5 stated above, the Author states the right of a Debtor

**Yâjñavalkya, Verse 44.**

When being 'offered', *dyamânam*, the creditor does not accept the amount of his debt through covetousness for interest &c., that amount of his should be deposited by the debtor with a third party. 10 And that, thereafter i. e. after it is deposited with the third party, *na vardhate*, 'does not carry interest'. (44).

**S'ûlapâpi**

**Yâjñavalkya, Verse 44.**

So Samvarta: "No interest shall be charged on women's 15 property, on profits, nor on fixed deposits; on doubtful claims, also on a surety's liability, unless stipulated by oneself," 'fixed', placed between. (44).

Now the Author states when and by whom should a debt that ought to be paid, be paid 20

**Yâjñavalkya, Verse 45.**

A debt which however has been incurred by the undivided members for family purposes should be paid by the coparceners when the manager of the family is either dead or has gone abroad. 25

**Mitâksharâ:**—*Avibhaktaih, by the undivided members of the family; Kutumbârthaîn,* for family

A debt incurred purposes; or by each separately; *yadpyam* for family purposes *krtam*, a debt which has been incurred, that must be paid. debt the head of the family must pay. When 30 he is either dead, prete, or has gone abroad, proshite; *rikthinah*, his coparceners; *dadyuh*, should pay.

I. यद्यपि—Thus where a debt was contracted by the manager and for a joint family concern, it will bind the members. *Gokul vs. Amarchand* 9 Bom. L. R. 1260; and so a trade debt incurred by a widow in management was held to be binding. *Salarbhî vs. Maganlal* 3 Bom. L. R. 728 (F. B.); see also *Sho Pershad vs. Satip Lal* 20 Osl. 453; *Sham Sunder vs. Achhen Kumar* 25 I. A. 183; 27 All. 71. *Raghunathji Tarachand vs. Bank of Bombay* 34 Bom. 72. *Suraj Bahadur Singh vs. Raj Kedar Nath* 7 Luck. 565.

## Viramitrodaya.

Now, a debt, what kind should be paid by whom, and by whom also it should not be paid, the Author states that by seven verses

## Yājñavalkya, Verse 45.

5 *Avibhaktaiḥ*, 'by the undivided members', such as the brothers, father, etc. *Kutumbasya*, 'of the family' necessity such as maintenance &c., *arthā* 'purpose,' for the maintenance (of the family), *yadynam kṛtam*, 'what debt has been incurred', *tat*, 'that' debt, *rakthinah*, 'the co-parceners', i. e., the undivided brothers and the like all, *kutumbīni*, 'on the manager of the family' i.e., the person who incurred the debt for a family purpose such as the father &c., *prete*, 'when dead', or *proshite*, 'has gone abroad', *dadyuḥ*, 'should pay'.

By the use of the word *tu*, 'however', is excluded a debt which has been incurred for a special purpose of his own, and which must be paid by 15 him<sup>1</sup> only, and not by others i. e., the co-parceners. (45).

## Sūlapāṇi.

## Yājñavalkya, Verse 45.

Of the members living jointly, such as the uncle, nephew &c. by one if a debt is incurred for a family purpose, when that member has 20 gone abroad or is dead, that debt, these should pay.

Manu<sup>2</sup> says that what was contracted for the joint family, must be paid even by the divided members: "If the person contracting the debt be dead, and the money was appropriated for the purpose of the family, such must be paid by the members themselves even though separated." (45).

25 The Author states by an example by whom (a debt) should be paid

## Yājñavalkya, Verse 46.

A woman need not pay a debt incurred by her husband or son; nor a father that (incurred) by the son; 30 except when it is (contracted) for family purposes, nor likewise a husband that of the wife.

1. Thus a mortgage by a manager or even a father for starting a new business does not bind the others. *Bentress Bank Ltd. vs. Hari Naren* 54. All 564; *Guru Mukh Singh vs. Shri Ram* 17 Lah. 53. *Sabha Chand vs. Sambhu* 39 Bom. L. R. 118.

2. Ch. VIII. 167.

Mitāksharā :—A debt Patyā, incurred by the husband; yoshit, the woman i. e. the wife, should certainly not pay; putreṇa kṛtam, that contracted by the son, yoshit, the woman i. e. the mother should not pay. Similarly, a debt incurred by the son, the father need not pay. So the husband need not pay strikṛtam, that contracted by the wife. The clause kutumbārthādṛye, except when it is (contracted) for family purposes, qualifies all. 5

And therefore by whomsoever a debt is incurred for a family purpose that should be paid by the head of the family. In his absence, it should be paid by those who are entitled to take his share. This has already been said<sup>1</sup>. 10

### Viramitrodaya.

The Author connects the aforesighted rule with both

#### Yājñavalkya, Verse 46.

*Patiputrabhyām kṛtam*, 'by the husband and the son, incurred', a debt, yoshit, 'the woman', either the wife or the mother of the person contracting the loan, should not pay back to the creditor. *Putreṇa Kṛtam rpaṇam*, 'a debt incurred by the son', the father need not pay. *Striyā*, 'by a woman', i. e., by the wife, similarly, unless incurred for a family purpose, the debt a husband need not pay. This is by implication<sup>2</sup>. As says Viśnu: 'Nor what was contracted by a woman, either the husband or the son (should pay)'. (46). 20

#### Sūlapāni.

#### Yājñavalkya, Verse 46.

So Bhṛaspati: "A debt incurred by the son, may be discharged by the father, if agreed to (by him); or he may make (the payment) out of affection for the son; not otherwise." (46).

1. Verse 45 above p. 783.

2. अनुभाव—Implication—अनुभाव करने सहि शेषदातिराइत्यतम् Implication of something in addition of any similar object when any one is mentioned; a part for the whole, or an individual for the species, or of a quality for that in which the quality exists. *Afsl.*

3. Ch. VI. 32.

The Author will say<sup>1</sup> further on that a debt should be paid by sons and grandsons. He mentions by anticipation an exception to the rule.

### Yâjñavalkya, Verse 47.

That which was contracted for the purposes of spirituous liquor, lust, or gambling, or which is due as the balance of an unpaid fine or toll, as also a gift without any consideration the son should not pay (such) paternal debt.

Mitâksharâ :—A debt which was contracted<sup>2</sup> for drinking surâ, spirituous liquor. Contracted for kâma, lust, i. e. brought about by a passion for women. In dýûte, gambling i. e. brought about by a defeat (in it); dandasulkayor, avasîshṭam, the balance due from a payment of fine or bride-price. Idle gifts vrithâdânam, gifts without consideration, what has been promised to rogues, hards, wrestlers &c. As it has been said: “ What has been given to a rogue, a hard, a wrestler, a quack, a liar, and a cheat, and to swindlers, itinerant singers and dancers and to thieves bears no fruit.”

\* Page 32.

Such a debt, when incurred by the father, the son and others should not pay i. e. to the vintner and others.

Here from the use of the word ‘balance’ in the text “a balance of an unpaid fine or toll” it should not be supposed that the entire amount is to be paid. As Aus’anasa has said: “A son should not pay a fine or the balance of it, the (amount of the) toll or its balance, and also whatever is not<sup>3</sup> legal or capable of being recovered by a suit.” It has also been said by Gautama<sup>4</sup>: that “(money due from a father on account of) a debt incurred for spirituous liquor, or a sulta<sup>5</sup>, or in gambling, or for amorous pleasures

1. Verse 50 p.

2. मुत्तपेन i. e. मुत्तपाय Hero the Instrumental has the force of the Dative. The instrumental denotes the हृति under the वृत्. ये ‘हृति’ 2-3-23. The example given in the फीयुक्ति is अस्तपेन वृत्ति—where अस्तपेन is equivalent to अस्तपाय।

3. अस्तपायिकाद—see Durbar Kachar Odha Lal vs. Kachar Harsar 32 Bom. 348 and cases cited in Gharpore's Hindu Law (1931 Ed. p. 232).

Where the liability of the father arose under a criminal offence e. g. theft Or. misappropriation Mahabir Prasad vs. Baldeo Singh 6 All. 234. Toshan Pal Singh vs. D. C. Agra 61, I. A. 350.

4. Ch. XII, 38.

5. Haradatta—interprets Sulta as bride-price. “मुत्तके प्रतिहृत्य विवाहं दृष्ट्वा दृष्टे द युर्वं न तद्युलकम्यामवाति ॥” sulta also means a tax, toll &c.

as also a fine shall not involve a son". The meaning is that they do not devolve upon a son. By this (text) a debt which should not be paid has been mentioned.

### Viramitrodaya.

Even a debt incurred by the father, sometimes need not be paid ; 5  
that the Author states

#### Yājñavalkya Verse 47.

For *Surd* 'spirituous liquor', and like causes, *kṛtam*, 'contracted', *dandam*, 'fines', or *sukham* 'bride-price', as also the balance of it. Of the three words is formed the *Dwandwa* compound as if it is a single word. 10 *Vṛtta*, 'idle', without regard to *dharma*, what was promised to be given—all this (kind of) debt *paitṛkam*, 'incurred by the father', *iha*, 'here', i.e., in satisfaction of a proceeding started in this world, *putro*, 'the son', *na dadyat*, 'need not pay'. For the father's emancipation in the other world, however, he may pay at his option. 15

By the use of the word *era*, 'also', is excluded the non-payment of what was promised by the father for a religious purpose, vide the text of Kātyāyana: "Whether while at ease or in distress, when a gift has been promised for a religious purpose, and the donor die without completing the gift, his son should be compelled to make it good; of this there is no doubt." 20

By the use of the word *tathā*, 'similarly', are included merchandise, etc., mentioned by others, so says Gautama: "Sons need not pay a surety debt, a debt incurred in trade, the bride-price, drinking and gambling debts, as also a fine." "Surety debt", i.e., an obligation incurred as a surety for appearance, or anxiety of assurance. 25

Bṛhaspati: "A debt incurred for spirituous liquor, or a gambling debt, an idle gift, a promise made under an amorous influence, or in wrath, a surety debt, or the balance of a fine, the sons should not be compelled to pay." Vyāsa: "The fine or the balance of a fine, the 30 bride-price, or a balance of it need not be paid by the son, as also *na vyāwahārikam*, i.e., that which is not incurred in accordance with law." *na Vyāwahārikam*, 'not incurred according to law', which is excluded by the law, such as that which was caused to be entered into under compulsion. 35

Kâtyâyana' explains what is incurred under an amorous influence, or in wrath : " Whether under a writing or even without it, what was promised, must be paid. What is promised to a woman of another should be known as a debt incurred under an amorous influence " (564).

- 5 Where after causing injury in anger or having caused destruction of property, what was promised by way of pacification, that should be known as a debt incurred in wrath " (565).

Here, by the mention of a fine, comes to be included its balance ; its repetition again, therefore, is intended to indicate that such should be made in the case of a very large fine ; a small balance, however, need not at all be paid. According to Ratnâkara it is deducible that in the case of a small fine even the entirety need not be paid. (47)

### S'ûlapâni.

#### Yâjñavalkya, Verse 47.

- 15 The father's debts (incurred) for drinking spirituous liquor or for sexual intercourse with women belonging to others, incurred for gambling, as a penalty ; the son should not pay. What has been admitted by the father as a debt to be paid is the 'father's debt'. A mother's debt the son need not pay. (47).

- 20 The Author mentions an exception to the text<sup>2</sup> "Nor a husband that of the wife."

#### Yâjñavalkya, Verse 48.

- The debt of the wife of a herdsman, vintner, dancer, washerman or hunter should be paid by the husband ; 25 since their livelihood depends upon them.

Mitâksharâ :—Gopah, *herdsman i. e. a cowherd*; saundikah, *a vintner i.e. a liquor-manufacturer*; eailushah, *a dancer, i. e. an actor*; rajakah, *a washerman i. e. a dyer of clothes*; wyâdhah, *a hunter i. e. pursuing the game*.

- 30 By the wives of these whatsoever debt is incurred that should be paid by the husbands Yasmât, since, vrttih, *their livelihood i. e. living; tadâsryâ, depends upon them, i. e., dependent upon women.*

1. Verses 564, 565.

2. Yâjñ. II 46 page 784. II. 28-29 above.

By specifically mentioning the reason (of this rule) viz. "since their livelihood depends upon them" it appears that others also whose livelihood depends upon women should also pay a debt incurred by the wife.

Viramitrodaya

5

'Not the husband, that contracted by the wife, similarly'; thus it has been said<sup>1</sup>; the Author mentions exceptions to this

Yājñavalkya, Verse 48.

*Gopak*, 'herdsman' i. e., a cowherd; *śaundikāḥ*, 'a vintner', i. e., a liquor-manufacturer; *śilāgho*, 'a dancer', i. e., an actor; *rajaka*, 'a washerman' i. e., a dyer of clothes; *vyādha*, 'a hunter', i. e., one who subsists on hunted animals; the wives of these 'tādām *rajanam*' their debts'; *patir dadyat* 'the husband should pay'; since, *teshām*, 'of these', i. e., of the cowherd and the rest, *vṛttir*, 'livelihood', i. e., maintenance, *tadāśrayat*, 'depends on them', i. e., is dependent on the wives.

15

Here the statement of the rule having been made with the statement of the reason, it appears that others also whose livelihood depends upon their wives, such as the fisherman, potter &c., should pay the debts contracted by the wives. (48)

Śūlapāṇi.

20

Yājñavalkya, Verse 48.

On account of the rule having been stated together with the reason, the wives of foresters &c. also are included. (48).

The Author mentions the exception to the rule that "A wife should not pay a debt incurred by the husband".

25

Yājñavalkya, Verse 49.

A debt agreed to by her, or which was contracted by her jointly with the husband, or by herself (alone), should be paid by a woman. A woman is not bound to pay any other debt.

30

1. Yājñ. II 46 page 784 l. 3.

Mitâksharâ :—By the husband who was either dying or proceeding on a journey, pratipannam, a debt

5 A debt which was agreed<sup>1</sup> to, on being charged or enjoined, such a debt of the husband, deyam, should be paid. Likewise a debt which was incurred by the wife, patyâ saha, jointly with the husband, even that, should be paid by the wife in the absence of the husband, when she is sonless. So also a debt which was incurred swayameva, by herself alone, should even be paid (by her).

10 It may be said :—"It need not be mentioned that the three kinds, such as a debt agreed to by the wife, &c., should be paid by her"; because there exists no doubt about<sup>2</sup> it.

15 The answer is that on account of the text<sup>3</sup>: "A wife, a son, and a slave—all the three are considered to be incapable of having property; whatever they acquire becomes the property of him to whom they belong", they are without any property; and a doubt may be created about the non-payment of agreed debts, &c., and hence the text: "A debt agreed to by a woman should be paid by her" has been mentioned. Likewise the text referred to above does not lay down the incapacity of women and others to hold property; inasmuch as the object of the text is to argue their dependence alone. Moreover, this will be made clear in the chapter on Partition.

20 It may also be said :—"Then it need not have been said that a woman is not bound to pay any other debt," because the non-liability

1. The Translation given here is in accordance with the two glosses viz., Bâlambhaṭṭi and Subodhini. The better rendering of the Mitâksharâ would appear to be as follows: "That which was assented to by the wife acting under the wish of her husband who was either in a dying condition or was about to set out on a journey." This would make it a debt incurred by her but for and on behalf of her husband. The two glosses appear to indicate it as a debt incurred in the first instance by the husband, but of which the liability was subsequently undertaken by the wife when the husband was on his death-bed or about to set out on a journey.

2. i.e. about her liability to pay, on account of the agreement.  
3. Manu VIII. 416.

for other debt follows from the principal rule itself.<sup>1</sup> To this the answer is that it is mentioned as an exception to the general rule contained in the text.<sup>2</sup>—"A debt agreed to by a woman should be paid by her, as also that which was contracted by her jointly with the husband." The purport is that *anyat*, *any other*, bad debt, covered by the text<sup>3</sup> "a debt incurred for spirituous liquor or for amorous passion, &c." should not be paid even if it had been agreed to or contracted jointly with the husband. 5

### Viramitrodaya

"Not<sup>4</sup> the wife, (a debt contracted) by the husband or the son", ending with this, it has been stated that a wife need not pay a debt contracted by the husband; there, the Author states a special rule 10

### Yâjñavalkya, Verse 49.

A debt contracted by the husband, for whatever reason, what has been *pratipannam* 'acknowledged,' i. e., admitted by him as repayable by himself, that, or that which was jointly contracted along with the husband, or what was contracted by the wife herself, that must be paid by the wife; no other debt is a woman bound by pay. 15

"By the husband"—this includes by implication, 'by the son' also. As says Kâtyâyana:<sup>5</sup> "contracted along with the husband, or the son, or incurred solely by herself." Nârada<sup>6</sup>: "Not the wife should pay what was contracted by the husband, similarly that contracted by the son. Or if by a husband on the point of death she is requested—'Oh dear, pay this,' then even if not acknowledged, she should—if the woman has taken (his) wealth." (49) 20  
 25

### S'ûlapâni.

"Not<sup>7</sup> the wife &c," to this the Author states an exception

### Yâjñavalkya, Verse 49.

By the words *yad, wi* &c., 'or that which &c.', vide the text of Kâtyâyana<sup>8</sup>: "With the husband, or along with the son &c.". 30 Kâtyâyana<sup>9</sup>: "By a husband who was about to die, when a woman was charged thus: 'This debt should be paid by you', even though not agreed to, she should be made to pay if she is possessed of wealth". (49).

1. i.e. the one contained in the first three quarters of Yâjñ. II. 49.

2. Yâjñ. II. 47. 3. Yâjñ. II. 46. 4. Verse, 548.

5. Ch. V. 16. also see Kâtyâyana Verse 547. 6. Verse, 547.

The Author mentions again the threefold classification, viz. what debt should be paid, and at what time also, and when should it be paid

**Yājñavalkya, Verse 50.**

5 When the father has gone abroad, is dead, or is immersed in difficulties also, his debt should be paid by the sons and grandsons; in case of a denial, when established by witnesses.

10 Mitakshara :—If the father, without paying a debt which is payable, pretah, be dead, or is gone to a distant

A debt payable country, or is attacked by an incurable disease by sons and the like, then the debt incurred by him when grandsons. made known, (should be paid) by the son or the grandson; and even when there exists no

15 property of the father, in their capacity as son and grandson.

Here the order (to be observed) is also thus: in the absence of the father, the son, in the absence of the son, the grandson. When the son or the grandson, neither have, set up a denial, a debt, kṛte, proved by (the plaintiff creditor) eākshibhāvitam, by means of witnesses, 20 and others should be paid by the sons and grandsons. This is the (order of) construction.

\* Page 39.

Here the text says only so much, viz. "When the father has gone abroad." The particular interval, however, should be allowed as mentioned by Nārada<sup>1</sup>: "Where the father, uncle, or the eldest brother has gone abroad, the son (nephew or younger brother) is not bound to pay his debt before the lapse of twenty years." And even in the case of death, he should not pay before he reaches the age of majority. After reaching the age of majority, however, he should pay. 30 That period, moreover, has been indicated by the same Author<sup>2</sup>: "Up to the eighth year, a child is viewed in the same light as one in the embryo. A youth who has not reached the age of sixteen, is called a Pauganda. After that he is (considered as) a major and is independent in the absence of his parents."

1. Ch. I, 14.

2. Nārada Ch. I, 35-38.

Although after the death of the parents he becomes independent even though a minor, still he does not become liable for (the payment of) debts. As has been said<sup>1</sup>: "One, who though independent, has not yet attained (the age of) majority is not liable for a debt. For it has been laid down that (real) independence belongs to the senior; (and) seniority is determined both by capacity and age." Similarly a prohibition against an arrest or summons is also noticeable *vide*<sup>2</sup>: "One who has not arrived at years of discretion, a messenger, one about to distribute alms, one observing a vow, and persons immersed in difficulties, these persons must not be arrested, nor shall the king summon them (before a court of justice)". Therefore, "Hence every one standing in the capacity of a son, leaving aside his personal interests, should free his father from debts by (all) efforts, so that he may not (have to) go to hell." Every one standing in the capacity of a son should be explained as 'a son who has attained the age of majority'. For (offering) a *s'raddha*, however, even a youth has authority, *vide* the text of Gautama *viz.*: "One must not make him (a child) recite Vedic Texts, except in pronouncing *Swadhi*".

By the use of the plural number in "Sons and grandsons," (it is indicated that) if there are several sons who are divided, they should pay according to their respective shares. If they are undivided, and are living jointly in a body, giving the managership according to qualifications, it appears that the manager alone should pay. As says Nārada<sup>4</sup>: "Therefore, when the father is dead the sons should pay the debt each according to his share, when they are divided; or if undivided (it should be paid) by one who holds the lead (in the family)."

Here although, it has been generally said that 'the debt should be paid by sons and grandsons', even then a distinction should be observed that by the son the debt should be discharged together with interest similarly as the father would do; by the grandson, however, only the amount equal to the original

1. By Nārada Ch. I. 31.

2. Nārada Intro. I. 52.

3. Gautama II, 5. The expression "pronouncing *Swadhi*" includes by implication the performance of all exequial rites". (विद्युत सर्वत्र कर्मण् वप्तव्यम्) हस्तः।

4. Ch. I. 2.

principal and not the interest. *Vide* the text of Brhaspati<sup>1</sup>: "The debt of the father which has been proved, should be paid by the sons as if it were their own (debt); the grandfather's debt should be paid in an even amount; his (i. e. grandson's) son, however, is not liable to pay any debt."<sup>2</sup> Here from the general use of the term 'proved,' the use of the term 'witness' in the expression "established by witnesses" is by implication indicative of any means of proof. Equal amount (*samanam*) i. e. as much as was taken should be paid, and not interest. His son (*tatsutah*) i. e. great-grandson is not liable to pay when he has received no property. This, moreover, will be made clear in the next verse.

### Viramitrodaya.

In the case of a debt contracted by the father, or by the grandfather, when neither is available for payment, by whom should it be paid? So the Author says

Yājñavalkya, Verse 50.

*Proshite*, 'has gone abroad' i. e., is travelling; *prete*, 'is dead'; *eyasane*, 'in difficulties' such as by an incurable disease or the like, *abhiprute*, 'immersed' i. e., overpowered; *pitari*, 'on the father' or the grandfather also; their 'debt' *r̄nam*; *ninhare* 'on a denial' i. e., on a concealment by the negotiator of the loan, or when disputed by the son and the grandson, *adhyuddibhiḥ* 'by witnesses' &c., and the like means of proof; *bhartitam*, 'established' i. e. proved by the creditor, such should be paid by 'sons or the grand-sons', *putrapautrerwād*.

By the use of the word *api*, 'also', is included the taking on a 'renunciation', (*gāvī*). *Vide* the text of Vishnu: "When the person who borrowed the money is dead, or has become an ascetic, or has gone out on travel for twelve years or more, the debt should be paid by the sons or the grand-sons, and not by any further (descendants) if unwilling."

The expression 'for twelve years' has application where the debt is incurred for other than a family purpose.

By the expression, 'by the sons or the grand-sons' are excluded the great-grandsons, *vide* the declaration in the text "and not by any further if unwilling".

1. Ch. XI. 49. But where ancestral assets have been recovered even a great-grandson is liable, see *Masitullah vs. Damodar* 53 I A 204-212; 48 All. 518.

2. Ch. VI. 27.

Here Vyāsa<sup>1</sup> mentions a special rule: "A debt of the grandfather should be paid; a son should pay a liability incurred on account of surety-ship; he should be compelled to pay an equal amount; his son, however, must not be compelled to pay; this is certain". *Samam*, 'equal', i. e. without interest. 'His son', i. e. the son of him who has to pay an equal amount. (50).

## S'ūlapāpi

Yājñavalkya, Verse 50.

When the father who has incurred a debt, is addicted to gambling, prostitutes, and other vices, or is attacked by an incurable disease or the like, as also when he has fallen, in a case of dispute, what has been demonstrated by witnesses and the like, should be paid. 10

So Nārada<sup>2</sup>: "When the father is dead, the sons should pay the debt according to their shares". Brhaspati<sup>3</sup> mentions a special rule: "The father's debt, when proved, must be paid by the sons as if it were their own; the grandfather's should be paid, (but) equal<sup>4</sup>; but his son, has not to pay at all". 'As if it were his own', i. e. with interest. 15

Kātyāyana<sup>5</sup>: "When the father is alive, but is oppressed by a disease, as also when he has gone abroad for twenty years, a debt contracted by the father should be paid by the sons". 20

In the discharge of a debt, the debtor, his son and grandson have been indicated as the three persons who are liable; their order of liability has also been pointed out when they all co-exist. Now the Author mentions the order (of liability) when these and (others also) who are liable, exist together 25

*Qazī* Yājñavalkya, Verse 51.

The heir who takes the heritage, should be made to pay his debts, as also he who takes the woman (of the

1. This is an important text as it lays down different kinds of liabilities and on different bases thus. (1) A son is liable to pay a surety-debt but only the principal, and not the interest (2) and so is a grandson liable to pay the grandfather's debt, only the principal, and that too for an ordinary debt, but not a surety-debt. (3) In either kinds of debts and persons, the liability does not extend to their sons. See however, note 1 on p. 794.

2. Ch. I. 2.

3. Ch. XI. 49.

4. i. e. without interest, see the text of *Vyāsa* and the note on p.

5. Verse 548.

deceased), or (failing these), the son when the parental estate has not gone to another. Of a sonless man, those who take the heritage (should be made to pay the debts.)

Mitâksharâ:—Property which belongs to another, but becomes one's own otherwise than by purchase etc, is (termed) riktha, *heritage*. *He who takes the heritage* by inheritance is (called) a riktha-grâhah. *He should be made to pay the debt,* sa ग्राम दाप्याह. This is the meaning. He who takes the property of another in the form of a heritage, should be made to pay the debts incurred by such a one, and not a thief etc.

*He who takes the woman i. e. the wife, is a Yoshidgrâhah.* He should be made to pay in the same manner. Whosoever wife a man takes, that man should be made to pay the debts of him. The wife has been specially mentioned as it is (i. e. the term) incapable of falling under the term riktha, as also it is indivisible property.

*Putro, a son, also when the parental estate has not gone to another, ananyâs'ritadravyâh, should be made to pay the debt.* That which has gone to another is 'wealth gone to another,' anyâsritadravyâh. *He whose wealth has not gone to another* is an ananyâs'ritadravyâh; Putrahinasya, of a sonless man, rikthinhah, *those who take the heritage*, should be made to pay the debts. This is the construction.

When these co-exist, the order (of priority) is the same as is stated in the text i. e. he who takes the

\* Page 34 heritage should be made to pay the debts; in his absence be who takes the wife; and in

30 his absence the son.

51. See *Munshi Karim Uddin vs. Kumar Govind Krishna* 31 All.497 (P.O.)

The liability is personal.—The debts are not a charge upon the estate. *Iazman vs. Saratavati Bai* 12 Bom. II. C. R. 98.

As regards co-owners taking by survivorship, see *Desai Dayal vs. Jagdip Narain* 4 I. A. 247. *Udaram vs. Ram* 11 Bom. II. C. R. 76.

A widow taking assets is liable. *Jayanti Subbaia vs. Alamelu Manjamma* 27 Mad. 45. But not, if the debt was improper. *Kittendras vs. Raugubai* 9 Bom. L. R. 382,

It may be said that of these the co-existence itself is not possible; because according to the text<sup>1</sup> "Not

\* Objection brothers, nor the paternal ascendants, (but) the sons are entitled to take the heritage of the

father," when a son exists, it being impossible for any other to take the inheritance. It is also not possible to find one 'who takes a wife'—on account of the text<sup>2</sup> "Nor is a second husband ever recommended for virtuous women." Further, it is also improper to say, that the son should be made to pay the debt, as it has been (already) said that 'the debt should be paid by sons and grandsons'. The qualifying expression 'when the parental estate has gone to another' is also meaningless, as it is impossible for the property to go to another when the son exists; and even if it were possible, that import is already expressed by the clause "He who takes the heritage &c." Lastly, it should also not be said that '(The debts) of a sonless man (should be paid by) those who take the assets,' because it has been established that he who takes the assets should be made to pay the debts even if the son exists. It follows therefore that much more is one who takes the assets liable to pay the debts when there is no son.<sup>3</sup>

To this the answer is as follows: It is possible that another may take the heritage (even) when the son exists, as there is no (right of) succession to inheritance for the impotent,

The Answer. tent, the blind, the deaf and the like others even though they occupy the position of sons. Moreover,

the Author will say further on,<sup>4</sup> after commencing (in order) with the impotent and others, that "these should only be maintained without a share." As Gautama<sup>5</sup> has said: "According to some, the son of a woman of equal caste even does not inherit, if he is living unrighteously." Hence also, when the sons are impotent or otherwise (incompetent), and the son of a woman of equal caste leads an unrighteous life, the uncle, his son and (like) others take the heritage.

1. Cf. Manu. IX. 185.

2. Cf. Manu. Ch. V. 161.

3. Here ends the five-fold objection.

4. II. Verse 140.

5. Ch. XXVIII. 40.

Although it is not possible for one to take the wife of another as the *S'astras*<sup>1</sup> are opposed, still one who transgresses the prohibition certainly becomes liable to discharge the debts incurred by the former husband. A man is called a *Yeshidgrahi*<sup>2</sup> when he takes the last of the four kinds of *Sicairini* (wanton) women or the first of the three kinds of *Punarbhū* (re-married) women: As says Nārada<sup>3</sup> " (Besides the lawful wives) seven other sorts of wives are mentioned in order, who had previously belonged to another. Among these the *Punarbhū* (re-married) is of three kinds, and the *Sicairini* 5 Nature of women (wanton woman) is fourfold (45). "A maiden owned by another not deflowered, but bearing the taint of the and others. acceptance<sup>4</sup> (only) of the hand (by the bridegroom) 10 is termed the first *Punarbhū* on account of the performance of the ceremony of marriage a second time<sup>5</sup> (46). When 15 a woman has committed a crime and she is given in marriage to another by the elders, taking into consideration the usages of the country, is termed the Second *Punarbhū*" (52). Who has 'committed a crime' means who has 'committed adultery'. "When a woman in the absence of the brothers-in-law, is given (in marriage) by her relations 20 to a *sapinda*, who is of the same caste, she is termed the third *Punarbhū* (48). When a woman, no matter whether she has borne children or not, goes to live with another man through lust, even while her husband is living—she is the first *Swairiṇī* (49). One who, after

1. Or, as it would be opposed to the *S'astras*. But it should be noticed that a custom exists e. g. among the Ahirs of the United Provinces to take on to himself the wife of a debtor dying without redeeming the debt. And an instance was noticed very recently in Central India where the brother redeemed the wife of his deceased brother taken on by an unpaid creditor.

2. One who takes the wife of another. 3. Ch. XII. 45.53.

4. Dr. Tolly translates as, "Who have previously been enjoyed by another man".

5. *Papigrahapa* (पपिग्रहपा) is the acceptance of the hand of the bride by the bridegroom.

6. In Dr. Jolly's edition of the Nārada Smṛti, this verse has been placed as descriptive of the last of the *sacīṇī* women, exchanging it with verse 47 which is given there as descriptive of the second *Punarbhū*. While both Vijnāneśvara and Mitra-miśra here as also in his Digest (see page 347) give this as descriptive of the second *Punarbhū*. In the Smṛtichandrikā also Devanabhajja cites this as from Nārada as characteristic of the second *Punarbhū*. (see p. 173 l. 5)

having left the husband of her youth and betaken herself to another man, returns into the house of her husband is known as the second *Swairini* (47). When after the death of her husband, and leaving aside her brothers-in-law and other near relations a woman unites herself with a stranger through love, she is called the third *Swairini* (50). One who having come from a foreign country, or having been purchased with money, or being oppressed with hunger or thirst, gives herself up to a man, saying.—'I am thine,'—is declared to be the fourth (*Swairini*). "The debts contracted by the husbands of the last of the *Swairinis* and of the first of the *Punarbhūs* must be paid by him who lives with them."<sup>1</sup>

The same author has mentioned even other persons (than these) who take the wife of another who are liable for the discharge of debts: "If however, a woman who has considerable property or has a child and repairs to another man with these, that man must pay the debt contracted by her husband, or he must abandon her."<sup>2</sup> One having considerable property is a *Sapradhanā* i. e. possessing enormous wealth. So also "He who has intercourse with the wife of a dead man who has neither wealth nor a son, shall have to pay the debt of her husband, because she herself is considered as his property."<sup>3</sup>

Moreover, the repetition of the word *putra* is only indicative of order. By the expression *ananyāśritadravyah* it is indicated that even when there is no heritage, of the many sons, he alone is competent to discharge the debts who is competent to take a share and not the incompetent, such as the blind and like others. The expression "Of a sonless man, those who take the heritage" is also indicative of one who has no 'son or grandson.' i.e. if the great-grandsons etc. take the heritage then they should be made to pay the debts, and not otherwise; this is the meaning.

It has already been said that sons and grandsons should be made to pay (the debts) even when they do not

\* Page 35. take the heritage. As says Nārada:<sup>4</sup> "If a debt which has been inherited in an uninterrupted

1. Nārada I. 24.

2. Nārada I. 21.

3. Nārada I. 22.

4. Ch. I. 4.

line of descent has not been paid by the sons, such a debt of the grandfather must be discharged by his grandsons. The liability ceases after the fourth (person) in descent." Thus everything<sup>1</sup> is faultless.

5 Or, it has been said "that failing him who takes the wife,  
the son should be made to pay."

It has been laid down that failing the son, one who takes the wife should be made to pay. By the *rikthi* in the expression *putrahinasya rikthinah* the wife alone is indicated. Because the text<sup>2</sup> is "She herself is considered as his property;" as also—"He who 10 takes a man's wife, takes his wealth."

It may be said, the two expressions viz. "In the absence of him who takes the wife, the son should be made to pay the debt", and "In the absence of a son, he who takes the wife (should be made to pay)"—

15 are mutually contradictory. When both exist, no one should be made to pay. (To this the answer is): There is no fault here. In the absence of those who take the last *Svarini*, the first *Punarbhū*, or a wife having considerable wealth, the son should be made to pay. And in the

20 absence of a son, he who takes a wife having no property or child should be made to pay. This very thing has been said by Nārada<sup>3</sup>: "Of the three viz. he who takes the wealth, as well as he who takes the wife, and (lastly) the son, he is liable for the debts who takes the wealth. The son is liable in the absence of him who takes the wife 25 or of him who takes the wealth; and he who takes the wife (is liable) in the absence of him who takes the wealth or of the son." When all the three viz. he who takes the wealth, or he who takes the wife, and (lastly) the son, exist together, he who takes the estate becomes liable for the debt. The son, in the absence of him who takes the wife 30 or him who takes the wealth. (The words) *Strī* and *dhana* make up (the compound word) *Stridhana*. Those who possess these (two) are (indicated by the compound word) *Stridhaninā*. In the absence of these two i. e. the *Stridhaninā*, the son alone becomes liable for the

1. This has a reference to the five points of objection stated above.

2. Narada. I. 22.

3. Ch. I, 23.

dehts. In the absence of him who takes the wealth, or of the son, he who takes the wife is alone liable for the debts. In the absence of him who takes the wife, the son is liable for the debts, and in the absence of the son he who takes the wife. Thus is removed, as before, the apparent contradiction.

Of the clause "Of a sonless man, those who take the heritage" (should be made to pay the debts) there is another explanation: When it is asked to whom these persons who take the wealth, or the wife, as also the son, should be made to pay, the answer is that they should be made to pay the creditor, in his absence his son &c.; and when in the absence of his son &c. it is asked to whom should these be made to pay, this clause would have an application.

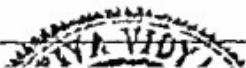
The expression "Of a sonless man, those who take the heritage" means this: He who is the *rakhi* i.e. a *sapinda*, or another who is entitled to take the inheritance of a creditor who has no son or other issue, should be made to pay to him—the *rakhi* (the debtor). For Nārada<sup>1</sup> has said:—"Whatever debt is due to a (deceased) Brāhmaṇa creditor who leaves issue is payable to the issue. If there be no issue it should be paid to his *sakulyas*, and on failure of these, to his own *bandhus* or kindred". When, however, there are neither *sakulyas*, nor relatives, nor the kindred, then it should be paid to the twice-born. On failure of these, it should be cast into the waters." (51.)

### Viramitrodaya.

Intending to mention persons other than the sons and the like, 25 liable to pay a debt, the Author proceeds

#### Yājñavalkya, Verse 51.

*Putrahinasya*, 'of one without a son', not oppressed with difficulties, possession of wealth, and competent; *rakthinhā*, 'those who take the assets', of the debtor, by any means whatever is to be proceeded against 30 in regard to his property which he has made his own, such a one if he is indifferent, should by a regular procedure be made to pay the wealth in the form of the debt. In his absence, one who takes over the wife of the debtor should be made to pay.



The use of the word *cak*, 'also', is intended to include others not (here) specified who may (be made to) pay. Thus one not oppressed with difficulties, possessing wealth, and competent, such a son, or also a son not like him, who has taken the father's entire property, is liable for the payment of his debt, as he has taken the entire estate. Thus here, the conclusion is that, in the absence of the first and the last, a son not oppressed with difficulties, possessing wealth, and who is competent, in his absence one indifferent who takes the heritage, in his absence, one taking the wife of the sonless man with property, and in his absence, 10 a son though not possessing the aforesaid qualifications.

The word *cak*, 'also' is to be used after the clause 'of one without a son'. From this, it has been pointed out that the debt of one who has a competent son, should not be paid by one who takes the assets or one who takes the wife.

15 So Brhaspati<sup>1</sup>: "The liability for the debts devolves on the successor to the estate, when the son is involved in a calamity; or on the taker of the wife, only in the absence of the taker of the estate". Kātyāyana<sup>2</sup> also: "A son should be compelled to pay the debt, if he is free from worry, and capable of having property, and competent; 20 otherwise a son should not be made to pay (557). Where a son is found to be overpowered with difficulties, or is a minor, the taker of the assets should be made to pay it, and in his absence, the taker of the wife (576)".

This rule of adjustment is in regard both to difficulty and equity, 25 and is also approved of the Mītra; and therefore any opinion in other digests contradictory of this should not be admitted.

As regards the clause, 'of one sonless, those who take the heritage', the Mitāksharā<sup>3</sup> explains that by this it is stated that in the place of a sonless creditor, those of the Sapindas who take the assets 30 should be caused to be paid by the debtor.

In the case of a taker of the wife, Kātyāyana<sup>4</sup> explains: "What was contracted by the moneyless and sonless vihñi and the like, that man who enjoys his wife must pay his debt" (577). By the word *ddi*, 'and the like', are to be included those who depend for their livelihood 35 upon their wives. Similarly<sup>5</sup>: "Those who have gone on a long journey,

1. Ch. XI. 52.

2. Verses 557, 576.

3. p. 301. I 5-10.

4. Verse 567.

5. Verse 576.

who have been cast off, and who bear the marks of dullness in intellect or insanity, of these even though living, the debt should be paid by those who have resorted to their wives or assets (578)."

Nārada<sup>1</sup>: "One who is a maiden yet, not deflowered, but hearing the tint of the acceptance (only) of the hand (by the bridegroom) is termed the First Punarbhū on account of the performance of the ceremony of marriage a second time (46). Taking into consideration the usage of the country, when a woman is given in marriage to another by the elders, when she has been guilty of a crime<sup>2</sup>, such a one is termed the Second (Punarbhū) (52). In the absence of the brothers-in-law, when a woman is given in marriage by the bāndhavas or kinsmen, to a man of the same varṇa and of the same piṇḍa<sup>3</sup>, she is termed the Third (Punarbhū) (48). When a married woman, either when she has borne children, or has not had children, resorts to another man through lust, while yet her husband is living, she is called the First Swairīṇī (40). One who, after having left the husband of her youth and betaken herself to another man, returns to the house of her husband is known as the Second Swairīṇī (47). When after the death of her husband, leaving aside her brother-in-law and other relations, a woman unites herself with a stranger through love, she is called the Third Swairīṇī (50). One who having come from a foreign country, or having been purchased with money, or being oppressed with hunger or thirst, gives herself up to a man saying—'I am thine',—is declared to be the Fourth Swairīṇī (57). In regard to the one who is the last of the Swairīṇīs, and the one who is the first of the Punarbhūs—the debts contracted by the husbands of these, must be paid by the man to whom they resort (I. 24)". (51).

### Sūlapūṇī.

Yājñavalkya, Verse 51.

Rkthagṛdhah, 'Who takes the heritage,' such as the uncle &c., on account of his relationship, one who has taken the assets; such a one rāyam dipyah, 'should be made to pay the debt'. So also the taker of the wife even. The son capable of taking property and devoid of any estate;

1. Ch. XII. 46-52; and Ch. I. 24.

2. i.e. adultery.

3. see note 6 on p. 798 above.

4. सरण्यं च सिंहाय is the reading in Jolly. Mitākṣharā, and in both the works of Miśra. सरण्यासिंहाय would be a better reading.

who has not received the father's property; not one who has taken the father's property, such a one being included in his capacity of having taken the assets. Of one without a son, those who are competent to take the heritage, such as the uncle &c.

- 5      Of the taker of the heritage, or of the wife, or the son, when and by whom should be paid? So Nārada<sup>1</sup>: "Of the three viz.: he who takes the wealth, as well as he who takes the wife, and (lastly) the son, he is liable for the debts who takes the wealth; the son is liable in the absence of him who takes the wife, or of him who takes the wealth; 10 and he who takes the wife (is liable) in the absence of him who takes the wealth, or the son." In the absence of the taker of the wife or of the heritage even by a son who is not competent may be paid; when the taker of the wife or of the heritage are available, only by a son who is competent. On this rule of adjustment Kātyāyana<sup>2</sup> says: "A son should be compelled 15 to pay the debt, if he is free from worry; is capable of having property and is competent; otherwise, the son should not be made to pay (557). Where the son is oppressed with difficulties, or is seen to be a minor; in such a case, the taker of the property should be compelled to pay, and in his absence, the wife-taker (576)." (51).

- 20      While mentioning the prohibitions regarding the recovery of debts from particular individuals, the Author mentions other prohibitions.

### Yājñavalkya, Verse 52.

- 25      Among brothers, between the husband and the wife, and between the father and the son, the relation of suretyship, lending, or being witnesses has not been allowed while they are undivided.

Mitāsharā :—The relation of a surety is *suretyship, prātibhāvyam*. Of the brothers, of the husband and wife, and the father and son while the estate

- 30      is *undivided, avibhakte dravye*, i.e. before the partition of the estate, the relation of suretyship, lending, or being a witness has not been allowed, *na smṛtam*, by Manu and others. 35 family) undivided. Nay, it has even been prohibited as there is (still) the community of wealth. As it is quite possible

that suretyship and being a witness might lead in the end to loss of money, and also as a debt requires necessarily to be repaid.

This rule (of prohibition), however, applies when there is no mutual consent. For, by mutual consent, the relationship of suretyship &c. may indeed take place even though (the members be) undivided. After partition, it takes place even though there is no mutual consent.

It may be said, the prohibition against the relation of suretyship &c. between the couple before partition is not

An objection. proper. As there is no (possibility of a) partition between them, the qualification<sup>1</sup> would be meaningless. And the negation of a partition has been laid down by Apastamba<sup>2</sup> (thus) :—“No division takes place between husband and wife.”

(To this the answer is), True; but the absence of a division has a reference only to the rites which can be

An Answer. performed by means of the *Srauta*<sup>3</sup> and the *Smarta*<sup>4</sup> fires and to the rewards proceeding from these (rites), and not moreover to all kinds of acts and property. For, after stating that no (division) takes place between the husband and the wife, and anticipating the question ‘Why does it not take place?’ the (same) author has thus laid down

Page 36. the reason (for this rule): “For, from the time of marriage, they are united in religious ceremonies, likewise also as regards the rewards for works by which spiritual merit is acquired.” For i.e. since their union has been laid down in religious ceremonies beginning with the acceptance of the hand (of the bride by the bridegroom), vide the text: “The husband and wife should consecrate the (sacred) fire.” Therefore since the two have a joint right in the consecration of the fire, they

1. rit. ‘before partition’.

2. 2-6-14-10.

3. A *Srauta* (श्रावा) karma is that which is prescribed by the *Śruti* or *Veda*. A *Smṛita* (स्मृति) karma is that which is laid down in the *Smṛitīs*, e.g. in the several *Gṛhyas* works of each *Śākhā* of the several *Vedas*.

4. Apastamba 2-6-14-(17-18.).

have also a (similar) and joint right in regard to the rites which are to be performed by means of the sacred fire prepared by means of the consecration. Moreover, from the text<sup>1</sup>: ("Let the householder perform) the *Smṛita* ceremonies on the nuptial fire &c.", the 5 two have a joint right even in (the performance of) the rites to be performed by means of the nuptial fire. Therefore in ceremonies which are independent of either of the two fires such as the *pūrta*<sup>2</sup> rites, the husband and the wife have each a right independently of one another. Moreover, the (perpetual) union of 10 the husband and wife has been laid down in reference to (the attainment of) heaven &c. (which are) the rewards for meritorious deeds. Vide the *S'ruti* text<sup>3</sup>: "May yon (two) start an imperishable body in the heaven" &c. Thus it should be understood that the union of the two exists in reference to those acts (only) for which 15 they have a joint right, and not, moreover, in the rewards also of those performed with the husband's permission such as *pūrta*.

It may be said that the jointness (of husband and wife) has been laid down even, in connection with the ownership over wealth vide the text<sup>4</sup> :—"And with respect to the acquisition of property. 20 For they declare that it is not theft if a wife expends money on occasions (of necessity) during her husband's absence."

(To this the answer is), True; but this text has indicated the ownership of the wife over wealth, and not an absence of a division &c. Since after stating "With respect to the acquisition of 25 property" the Author<sup>5</sup> has mentioned the reason of the rule (stated) there. Thus, it means, that since Manu and others do not declare it to be theft in cases where in the husband's absence, the wife spends on special and necessary duties such as offering a meal or

1. Yajñ. I. 97.

2. *Pūrta-*पूर्ति—as opposed to and contradistinguished from ग्री. See further on Mitakshara Sk. p. 81. 1. 1-2. An देव Karma has been thus defined:—अस्मिन्नेत्रं तपः सर्वं देवान् ये च पाठ्यनम् । अस्मिन्नेत्रं देवान्यन्यां इष्टपूर्त्यभिपीयते ॥ While a ग्री Karma has been thus defined:—पाठ्यपूर्त्यकामादि देवान्यत्वात् च । अस्मान्यत्वात् च । युर्विष्टपूर्त्यभिपीयते ॥

3. Taittiriya Brāhmaṇa III. 7-5.

4. Āpastamba 2. 6. 14. (19. 20.)

5. i. e. Āpastamba.

alms to a guest, therefore the right of ownership over property exists in favour of the wife also. Otherwise it (i. e. her act) would be theft. Therefore a wife also may have a share at the option of the husband and not of her own will. As the Author (himself) says, further on<sup>1</sup>: "If he make the allotments equal, his wives should be given equal shares."<sup>5</sup>

### Viramitrodaya.

In the chapter on payment of debts, in the portion stated with the text 'Debt which may be paid, and which may not be paid &c.', while stating to whom it may not be paid, in that connection, the Author states other prohibitions also in that place

#### Yājñavalkya Verse 52.

In the word *avibhakta*, 'undivided', the past participle (*kta*) is used in the abstract<sup>2</sup> sense. Therefore, when there has been no separation, *bhrdrgñam*, 'between brothers' mutually, *dampatiyoh*, 'between a couple' i. e. a husband and wife, as also between a father and son, *pratibhādayam*, 'the relation of suretyship', i. e. bail, *rñam*, 'lending' i. e. giving of a loan, *saktiyam*, 'being witnesses,' (position of a witness), for establishing a point in dispute, *na smṛtam*, 'has not been allowed' i. e. is not approved of the *Smṛtis*.

The word *atha*, 'or', is indicative of the inclusion of the paternal uncle, brother's son, and like others. The word *cha*, 'and' indicates the inclusion of re-united relations. The word *tu*, 'however', indicates the non-application of this rule in the case of consent or in regard to extraordinary things. Thus when the other party is agreeable for a suretyship or to the testimony, then the son &c. can become a surety, as also a witness for the father and the like. In the case of *Saudāyikī*<sup>3</sup> articles, even when not separated, mutual transactions may take place.

After partition, however, the relation of suretyship may certainly exist, it has been expressly stated—"when unseparated", and also as there could be no objection. In the case of suretyship and being witnesses other particulars will hereafter be mentioned (52).

1. i. e. Yājñ. II, 116.

2. मोक्षः i. e. in a state or condition of separation.

3. स क्षमा—affectionate gifts received individually. These do not become part of the family property, but are owned by the donee as of their personal right.

S'ūlapāni

Yājñavalkya, Verse 52.

The meaning is plain. Nārada:<sup>1</sup> “(The acts of) giving evidence, of becoming a surety, of giving and of taking, may be mutually performed by divided brothers, but not by unseparated ones.” (52).

## THE LAW OF SURETYSHIP

Now the Author proceeds to consider the law of suretyship

Yājñavalkya, Verse 53.

For appearance, assurance, and for payment  
10 is suretyship ordained. The first two, however, should be  
made to pay in case of default, while in the case of the  
.last, the sons even (should be made to pay).

Mitāksharū :—Prātibhāvyam, suretyship, is a ‘contract  
with another person with the object of creating  
15 Suretyship is confidence.’ That, moreover is divided threefold  
three-fold. according to the difference in the subject-matter;  
e. g. dars'ane, for appearance, i.e. with the  
words “whenever his appearance is necessary, I shall produce him”;  
‘pratyaye, by way of assurance, e.g. confidence i.e. “upon my assurance  
20 lend him money, he will not deceive you. Since he is the  
son of such and such a person, or he possesses a very fertile land,  
or possesses an excellent village”; dāne, for payment, e. g. “If he  
does not pay, then I myself will pay.” Thus is suretyship ordained.  
(this) clause is to be taken along with each.

25 Adyau tu, the first two however, i.e. the sureties for appearance  
and of assurance; vitathe, in case of default, i. e. if things turn out  
otherwise, that is to say in case of non-appearance or a breach of the  
assurance; dāpyau, should be made to pay, i. e. the amount at

issue, to the creditor by the king ; itarasya, *in the case of the last*, i. e. of the surety for payment, even the sons should be made to pay<sup>1</sup>.

*By default, vitathe,* is meant when the debtor evades payment either fraudulently or by (pleading) poverty. By saying 'in the case of the last even the sons', it has been (impliedly) said that the sons of the first two should not be made to pay. By mentioning 'the sons' it has been indicated that grandeone should not be made to pay.

## S'īlapāni.

Yājñavalkya, Verse 53

10

Suretyship has been ordained in regard to three viz. appearance etc., Ādyau 'the first two', i. e. the sureties of appearance and of assurance, on a non-observance of the condition should be compelled to pay. In the case of the surety for payment, the sons also must be made to pay. So Bṛhaspati<sup>2</sup>: "For appearance, for assurance, for payment, and also for delivering the assets of the debtor: it is for these four different purposes that sureties have been ordained by sages in the system (of law) (39): One says, 'I will produce (him)'; another says, 'He is a respectable man'; the third says 'I will pay the debt'; and the fourth says 'I will deliver his goods' (40). The first two, on a failure of the promise, shall be made to pay immediately the amount; while the two last, on a breach of the engagement (by the debtor); and in their absence, their sons also." (41). [53].

With a view to make this very thing clear, the Author says

Yājñavalkya, Verse 54.

Where a surety for appearance dies, or also a surety by assurance, the sons of such a one must not pay the debt; (but they should pay) in the case of a surety for payment.

1. In the case of a surety for payment, the sons are liable. *Thangathāmal vs. Arunachalam* 41 Mad. 1071. and this liability is independent whether any consideration was received by the father. *Dīrgha Das vs. Krishn Das* 55 All. 675.

2. Ch. XI. 39-41.

Mitâksharâ :—When darsânapratibhûh, a surety for appearance, prâtyayiko wâ, or a surety by assurance, mrtah, dies, i. e. goes to heaven, then

Sons of a surety for appearance need not pay the debt. 5 the sons of these two must not pay the paternal debt which has been incurred as a surety.

Where, however, dânâya sthitah, a man

standing surety for payment, dies (pratibhûh), tatputrâ dadyuh, his sons should pay, (and) not the grandsons. And these too should pay the principal amount only, not the interest; Vîde the text of Vyâsa 10 vñz.: “A grandson should pay the debt of the grandfather, as also a son that which is incurred as a surety, equal (in amount) to the principal only; their sons, moreover should not pay. This is (the) fixed (rule).”

A grandson should pay his grandfather's debt excepting that which was incurred under a suretyship,

\* Page 37. equal in amount, i. e. as much as was taken, and not the interest. Similarly the son also

(i. e. of the debtor) should pay his father's debt incurred as a surety equal only to the principal amount. The sons of these, 20 i. e. of the son and the grandson, i. e. the grandson and the great-grandson, should not be made to pay a surety-debt or even a debt which is not a surety-debt respectively when they have received no property.

As for the text: “If the debtor is moneyless, and the surety 25 possesses wealth, he shall be liable to pay the principal; he should not pay interest,” that too should be explained as follows:—*Lagnakah* is the surety, *Khadakah*, is the debtor. If a *lagnaka* dies possessed of wealth, then only the principal amount should be paid by his son, not the interest.

30. Q. Where a surety for appearance or a surety by assurance has stood surety after obtaining a sufficient pledge, there even his sons should pay the surety debt out of that very pledge. As says Kâtyâyana<sup>3</sup>: “Where a man stands surety for appearance after

obtaining a sufficient pledge from the debtor, his son shall be compelled to pay the debt from it in the<sup>1</sup> absence of his father." The use of the word *assurance* indicates by implication (also)<sup>2</sup> appearance. *In the absence of the father i. e.*, when the father is dead or has gone to a distant region.

## S'ûlapâni,

Yājñavalkya, Verse 54.

This verse is for the purpose of ordaining payment by the sons of the surety for payment only; and thus there is no repetition, so Kâtyâyanî<sup>3</sup>: "A surety obligation is never to be paid by the grandsons; 10 by the son even an equal amount is to be paid, in all cases of a paternal debt". (54).

Where there are more sureties than one, (a question would arise) how should the debt be paid? So the Author says

Yājñavalkya, Verse 55.

When there are more sureties than one, they should pay an amount proportionate to their shares. But when they are bound jointly and severally, they may pay according to the choice of the Creditor.

Mitâksharâ :—If in one transaction, there are two or bahavo, more sureties, then they should divide the debt and (each) should pay proportionately to the share (of each). Ekachhâyâśriteshu, 20

Mode of payment of debt when there are several sureties. when sureties are bound jointly and severally the (Chhâyat) image i. e. the resemblance of one i. e. of the debtor. (Those) whose liability is determined by it are known as *sureties bound jointly and severally*. As the debtor stands liable for paying the whole amount, so also are the sureties for payment bound jointly and severally to pay the entire amount.

In this way when there are sureties for appearance or by assurance, as also those who are bound severally they should pay

1. 'पूर्ण भूपात्' is another reading—which would mean 'even when the son has not received assets from the father.'

2. i. e. the mention of the surety for appearance includes the surety by assurance.

3. Verse, 561.

according to the choice, yathâkâmam, i. e. according to the wish of the dhanikâh, i. e. the creditor. And hence, whomsoever the creditor asks, having regard to his wealth &c., that one should pay the whole amount and not a portion.

5. Of those who are severally bound, if any one has gone abroad and his son is near, then he should be made to pay the whole according to the option of the creditor. When, however, he is dead, his son should be made to pay to the extent of his father's share without interest. As says Kâtyâyana<sup>1</sup>: "Of sureties jointly and 10 severally bound, any one who is available may be made to pay. In his absence abroad his son should be made to pay the whole. But if he be dead, his son should be made to pay equal to the share of the father."

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S'ûlapâni.

Yâjñavalkya, Verse 55.

In regard to a debt, where the sureties are limited by portions, there in the absence of the debtor, they should pay the portion of each his own.

- When sureties are bound as responsible for the debtor singly, the creditor may, at his option, recover the entire debt from one surety 20 alone (55).
- 

Having stated the law relating to the payment of debts under a contract of suretyship, the Author states the law as to the recovery of the amount paid by the surety

Yâjñavalkya, Verse 56.

25. For a debt which a surety has been made to pay publicly to the creditor, double that amount becomes repayable to him by the debtors.

Mitâkshara:—The amount which, yad, the surety

30. Debtors should pay double to the creditor, is *pratibhûh*, or his son being harassed by the creditor, is *publicly*, *prakâsam*, i. e. in the presence of all the people, *made to pay*, *dâpito*; to the creditor, *dhanino*; by the king, and not which he has made voluntarily by going to him out of a craving for a double amount. As says Nârada<sup>2</sup>: "What-

1. Verse, 538.

2. Ch. I. 121.

ever amount the surety shall pay when harassed by the creditor, the debtor shall pay double the amount to the surety"; *ṛnikaiḥ*, i. e. by the debtors; *tasya*, of him, i. e. of the surety; *dwigunam*, a double, *pratidātavyam*, becomes repayable. That, moreover, should be paid forthwith without waiting for any particular time, because that is the force of the text. This, moreover, has a reference to money (only). 5

It may be said that this text<sup>1</sup> regarding sureties lays down a rule as to the double (payment)<sup>2</sup> only. And this rule is deducible even without prejudice to the one previously<sup>3</sup> laid down i. e. (about the increase) which indicates the (several) periods of time. Just as the rule<sup>4</sup> regarding the performance of the ritual for the birth (of a

1. i. e. Yājñ. II. 56.

2. And not that the double is payable at once.

3. i. e. Yājñ. II. 37-39.

4. The *Jātēṣṭhi Nyāya* (जातेष्ठिन्याय) is mentioned by Jaimini in Sutras 38-39 of the third *Pāda* of the fourth *Adhyāya*. The discussion in this *Nyāya* turns upon the question whether the जातेष्ठि (*Jātēṣṭhi*) should be performed before or after the जातकर्म (*Jātakarma*).—The गृंगे maintains that it should be performed immediately after the birth of the child, but the सिद्धान्तिन् says it should be after the जातकर्म, and the conclusion is to the same effect.

The relevancy of this discussion here will be seen thus: The जातेष्ठिन्याय lays down in substance the general rule of interpretation that where there are two rules and they refer to the same subject-matter, they should be so interpreted and applied as to avoid as far as possible the fault of incongruity (see for a fuller discussion the शुभेपिणी Text p. 32 & Transl. pp. 76-80 and प. लैमटी on verso 56). In the present case the application of the रूपा is invoked in this way by the गृंगे (objector). Yājñavalkya in verse 37 lays down the rule about the periods of time when interest is allowed to accumulate. In the present *verso* (i. e. 56) the rule laid down is that a surety who is compelled to pay is entitled to a double. Therefore the suggestion in the गृंगे is that the rule in verse 56 should be taken as subject to or without prejudice (अवध) to that in verses 38 and 39, so that the double that the surety is entitled is not payable at once but subject to the conditions laid down in verses 38 and 39. This position has been refuted by the सिद्धान्तिन् and the conclusion arrived at is that the double that is due payable to the surety under this verse is payable at once (सर्व एव द्विगुणं द्वापन्नम्). Note the following extract from the *Sudobhisi*. यहते विश्वदेवतः । यथा गृद्वकल्प्यते अवधिदेव जातेष्ठिरेषाम्, तथा 'अशोत्रिभागी दृष्टिः रथात्' इयान्विनः दूरोक्तो यः कान्दकमेग वृद्धिक्रमः तदस्मिन्देव द्विगुणविधानतः अवध न हयो द्विगुणमेति । and there he states conclusion अवध द्विगुणमेति ब्रह्मो द्विगुणं तदेकान्दर्थं विपेष्य । (P. 32 & l. 15. Eng. Trs. p. 78 l. 28 and p. L 15.)

child) is (understood as being) laid down (to he) without prejudice to the rule about (the period of) impurity. Moreover, if it (i. e. the rule) is understood as laying down an immediate increased payment, it being impossible for an immediate (increase)

5 \* PAGE 38. i. e. a calf in the case of the female of a beast, it carries us to the payment of the original principal alone.

(To this the answer is) This is wrong. The present tax would be meaningless if it is understood as

10 The answer laying down a rule as to the doubling only (of the principal), since the rule as to the doubling (for the principal) by regard to the periods of time has already been established by the text<sup>1</sup>: "Of cloth, grain and gold the utmost increase is fourfold, threefold, and twofold." As for the 15 female of a beast, even under the rule of increase by lapse of time, if there is no progeny, the beast alone is to be returned. Moreover, even when some time after the payment of the amount the surety comes to an agreement with the debtor, it is possible to have the progeny then, or he may return the female beast along with the 20 progeny already born before. So there is no force in this objection.

Again, a surety-debt<sup>2</sup> is a debt, which is incurred voluntarily, and the payment made by the surety is therefore necessarily a voluntary payment. And there is no interest allowed for a voluntary payment before a demand. As has been said:<sup>3</sup> "A friendly loan 25 does not carry interest when no demand is made. If it remains unpaid on being demanded, it carries interest at five per cent." Therefore this text lays down that this debt which originates in a voluntary payment (by the surety) even though undemanded<sup>4</sup> would

1. Yājñ. II. 39 see above p. 769.

2. Here there is an attempt at a pun upon the word योनिदृश्. The compound is to be solved as योने दृश्—given for the pleasure of the peyee and not (प्रिया) of the peyer. The fallacy is best exposed by taking the original word योनिदृश् as it is. In Sanskrit it may mean "something given for pleasing another" or it may mean a friendly loan—as it is technically understood in the text cited from Nārada. The ground for the objection stated in the text, is supplied by the ambiguous middle योनिदृश्.

3. By Nārada I. 109.

4. i. e. By the surety.

(at the most) increase in course of time as far as double, commencing from the day of the payment, is what is (intended to be) stated by this text.

This also is wrong. Such a conclusion cannot be drawn from this text. The only inference deducible is that a double should be repaid. Therefore, what has been said above is proper *viz.* that having regard to the force of the text the double should be repaid without regard to the rule as to the periods of time. 5

Sūlapāṇi,  
*Yājñavalkya*, Verse 56.

Where the surety or his son has been compelled by the creditor to pay the amount, to him the debtors should pay double the amount.

By what time such double becomes payable, has been stated by Brhaspati<sup>1</sup>: "When a surety pays on a demand (an amount) which has been vouched for, after the lapse of three fortnights, that amount (the debtor) is bound to pay" (56). 15

The Author mentions exceptions to the rule as to a double payment to the surety which has been laid down (above) as a general rule

*Yājñavalkya*, Verse 57.

Progeny in the case of female beasts, three-fold in the case of corn, four-fold in the case of cloth, and eightfold in the case of liquids<sup>2</sup>.

Mitāksharā:—Like the double, in the case of gold, the female beasts &c. should be caused to be returned with interest as declared above without regard to (the rule as to) time. As for the verse itself<sup>3</sup>, it has already been explained. The purport is that whichever limit has been laid down as the highest (increment) for each particular thing, with that increase it should be paid at once by the debtor to the surety who has paid (the principal), and without waiting for any particular period. 30

1. Ch. XI. 44.

2. i. e. are allowed to a surety who has paid the debt on account of the principal debtor.

3. i. e. of *Yājñ.* v. 57.

When, however, a surety for appearance is unable, at the appointed time, to produce the debtor, then a three fortnight's time should be allowed to him for finding out the debtor. Then if he produces him, he should be released<sup>1</sup>, otherwise he should be made to pay the amount in dispute. Vide the text of Kātyāyana<sup>2</sup>: "As for finding out an absconding debtor, time should be given to the extent of three fortnights as the farthest limit. If during that time the surety point him out, the surety should be absolved. If (however) the surety do not point him out after the lapse of the time allowed), he should be made to pay the amount guaranteed. This is also the rule when he (i. e. the debtor<sup>3</sup>) is dead."

The same writer<sup>4</sup> has also laid down the rule prohibiting particular persons from becoming sureties: "Not the master, nor an enemy, nor one holding a power from the master; nor one under restraint, nor a convict, nor even one (who is) of a doubtful character; nor also an heir, nor a friend, nor the resident student, nor one engaged on a commission from the king, nor also those persons who have entered the fourth<sup>5</sup> order, nor one who is not competent to pay (the amount to) the creditor and an equal amount to the king as a fine, nor one whose father is living, nor a wayward, nor one who is not (properly) known, should be accepted as a surety guaranteeing performance by himself". Sandigdhaḥ, one of a doubtful character, Anhis'astāḥ, i. e. one upon whom hangs an accusation. Atyantavīśināḥ resident students, i. e. students leading a celibate life and specially known as Naishāhika brahmachārīnāḥ<sup>6</sup>.

Here ends the law as to sureties.

### Viramitrodaya.

In regard to a transaction with surety, the Author states special rules.

1. From his liability as a surety. 2. Verses, 532, 533.

3. See Bālambhaṭṭi.

4. Kātyāyana Verses, 114, 115, 116.

5. i. e. the last of the four stages of life according to the Aryan law etc. अङ्गवृत्त, पात्रवृत्त, वानवृत्त and शूद्रवृत्त. The life of a celibate, householder, hermit, and an ascetic.

6. See Yājū. I. 50 and Mitakshara thereon pp. 792-794.

Yâjñavalkya, Verses 53, 54, 55, 56, 57.

*Dâne*, 'for payment, i. e. making payment himself, by recovering from the debtor and making over.'

Moreover, Brhaspati<sup>1</sup> makes this clear: "Now, one says 'I will produce (this man)'; another says, 'He is a respectable man'; the third says, 'I will pay the debt'; and yet another says, 'I shall deliver the goods.' (40). The first two however, on a failure (by the debtor in his engagement) should be made to pay the amount advanced at the time; the last two also, on a breach of the engagement (by the debtor), and in their absence, their sons also. (41)".

He who says, 'I shall produce before you the man proceeded against' he is one kind of surety. In this way is to be connected further on also. 'I shall pay', so says another; thus is it to be connected. In the expression *Adyau tu* 'the first two, however', by the use of the word *tu*, 'however', it has been indicated that of the first two kinds of sureties, sons must not be made liable to pay. 'On a failure', i. e., when there occurs a discrepancy in the matter of the appearance or the goodness vouched for, the sons also shall be compelled to pay. This construction follows from the consequential change in the case inflexion. By the use of the word *api*, 'also' are included the sureties for payment.

The author of the *Mitksharâ* says that the Author further expounds what had already been stated before. As a matter of fact, however, the rule stated in the first verse relates to sureties when living; the word *itarasya*, 'of the other', meaning of the one gone abroad, and for a surety who is dead, the rule is stated in the second verse, and thus there is no repetition. This is the principle.

Those who stood sureties for payment, their sons should pay; this is the construction.

*Bahara iti*. If there are several sureties then they should pay upon a non-payment by the debtor, such portion of the amount of the debt as is proportionate to the fraction agreed to by each. Where a particular fraction has been fixed by an arrangement, there the adjustment is to be made under the rule: 'Equal shall be where no specification has been declared.' The word *bahara*, 'several' in indicative of more than one; therefore it should be noted that where there are two sureties, there also this arrangement holds.

1. Ch. XI.—10, 41.

2. i. e. Verse 53.

3. सर्वं प्रतिशेषात् is the full statement of the rule. Where no portion has been expressly specified, there the shares shall be equal.

See Jaimini X. III. 53-54. This is the 13th *Adhikarana* which has been stated thus:—

स एवाप्तः सर्वे दो वा विभागयनः समः । तेषां च यादया पासमेव तत्तदलक्षणम् ॥ ३ ॥

This maxm is illustrated in the *Parishâsa* to the *Paraskara Grhya Sûtra*, where oblivion to the several debts are prescribed—As no number is specified, one for each equally is the inference.

*Dhānyamitti*, 'corn &c.', where, whichever is the highest interest, there that together with the amount of interest should be paid to the surety, is the collective sense. By the use of the word *eva*, 'only', is excluded the calculation of any more interest. By the use twice of the word *cha*, 'and also', are added five-fold in the case of corn only, and in the case of trifles (the rate of) increase is not stated here. (53-57). 5

### S'ulapāṇi.

To this, the Author mentions an exception

### Yājñavalkya, Verse 57.

A woman and a beast, make up (the compound) 'a woman and the beast'; debt in the form of these is 'women and beasts'. Where women slaves, or she-goats etc. have been recovered by the creditor from the surety, there, the surety should recover from the debtor, the women slaves, or the she-goats etc. together with the progeny also. Grain etc. as stated before. All other things at double. (57). 15

## THE LAW OF PLEDGES.

In a loan transaction of money, the guarantee to be offered to the creditor is two-fold viz. a surety and a pledge. As says Nārada<sup>1</sup>: 'The guarantee to be offered to the creditor is two-fold; (viz.) a surety and a pledge.' Of these (the law as to) surety has 20 been dealt with. Now the pledge is being described. *Adhi*, *p'edge*, is that which is deposited i.e. hypothecated

The law of pledges. by the debtor with the creditor for the sake of (creating) confidence for the amount borrowed, (that) is an *Adhi*. That moreover, is two-fold: 25

*Kṛtakālah*, a pledge with a time-limit, and *Akṛtakālah*, a pledge with no time-limit. Each of these again is two-fold: A pledge for custody, and a pledge for use. As says Nārada<sup>2</sup>: 'A pledge is that which is deposited and is known to be of two kinds; one for (the redemption of) which a time limit is fixed, and the (other) which is to be retained until payment'. Again, it is said to be two-

1. t.h. I. 1.7.

2. I. 124 Dr. Jolly translates thus: "That to which a title is given (*adhibhivate*) is called a pledge."

fold ; a pledge for mere custody, and a pledge for enjoyment. 'At the period fixed' i. e. at the time of the loan Kinds of pledges. itself, e. g. (with the word) at such and such a time e.g. at the illuminati in festival—this pledge is 5 to be redeemed by me, otherwise it will become yours. At the time thus appointed (it is) to be taken away, i. e. to be taken near him—in other words—to be redeemed. *Deyam*, 'what is to be given', means (the act of) giving. 'Until payment.' *yāraddeyam*, means without prejudice to the *Deyam*. *Udyataḥ*, means fixed 10 \* PAGE 39. i. e. appointed. *Yāraddeyodyataḥ*, 'fixed until payment' means the time for which is the interval for the repayment of the borrowed amount, i. e. for which the time has not been fixed. For safe custody i.e. for being preserved.

### Yājñavalkya, Verse 58

15 A pledge lapses if (it is) not redeemed by the time the principal amount is doubled; that with a time limit, (lapses) by (the lapse of) the time; a usufructuary pledge never lapses.

Mitākṣhataḥ—If, *yadi*, i.e. when, *dhane* the amount, lent 20 becomes double in course of time with the

Special rules addition of interest as fixed by himself, na about the pledge mokshyate, (the pledge) is not redeemed by the & its four kinds debtor by the payment of money, then it lapses. described above. i. e. the property of the debtor becomes the 25 lender's own. *kālakṛtah*, with a time-limit.

The word *kāla* has been placed first under the rule of grammar in *Ahitāgnyādīshu*—"in (the compounds) *Ahitāgni* and the like, the words formed by the past passive participial terminations may be placed optionally at the beginning or end." That, moreover, 30 nas'yet, will lapse; *kale*, when the appointed time is reached, whether before or after it is doubled. *phalabhogyaḥ*, usufructuary, is that where the profits are to be enjoyed. (e. g. field, garden &c. That, na nasyati, does not lapse, at any time. By the text; "At

the time fixed, that with a time-limit lapse,<sup>1</sup> the lapse of both kinds of pledges limited in time—viz. for safe custody and for enjoyment has been laid down. The absence of a lapse of a pledge without a time-limit has been stated in the text: “a usufructuary pledge does not perish.” Therefore by ‘the rule of the remainder’ the text viz.: “A pledge would lapse<sup>2</sup> &c.” comes to be in reference to the pledge for safe custody, and not to one having a time-limit.

When a lapse occurs whether on account of the transgression of the rule of doubling or by the violation of the condition as to the time fixed (by the parties), a fourteen day's waiting time should be observed—*vide* the text of Brhaspati<sup>3</sup> viz.: “When gold is doubled or the stipulated period has elapsed, the creditor becomes the owner of the pledge after waiting for twice-seven days. During this period the debtor may redeem the pledge by paying the amount”.

It may be said ‘it is improper to say that a pledge shall lapse’ in the absence of circumstances such as gift, sale &c. which (would) cause a cessation of the debtor's ownership, as also in the absence of circumstances which would create the creditor's ownership, such as acceptance, purchase &c., and also because there would be a disagreement with the text of Manu<sup>3</sup>: viz. “Nor, moreover, can there be a transfer or sale of a pledge on account of length of time.” *Kālasamrodha*—‘Accumulation on account of time’—(the pledge) standing over for a long time. On account of the *Kālasamrodha* i.e., the debt remaining over for a long time, there cannot be a transfer (*na nisargosti*) of a pledge, i.e. there cannot be hypothecation with another, nor also a sale (*na cha vikrayah*). Thus from the prohibition against hypothecation or sale (of a pledge) an absence of ownership of the creditor is deduced. (To this) the answer is: Even the act of pledging itself is considered as a circumstance, although coupled with a contingent condition, creating the creditor's ownership. The acceptance of a pledge also is well known in the world as a circumstance, also coupled with a contingency, creating the creditor's ownership. So when the amount becomes doubled, and also when the appointed time has arrived, the right of paying

1. i.e. the first half of verse 58.

2. Ch. XI. 27.

3. Ch. VIII. 143.

the amount becomes entirely extinct, and therefore under the present text<sup>1</sup> there occurs an entire cessation of the debtor's right of ownership, and the ownership of the creditor becomes absolute. Nor, moreover, is there a conflict<sup>2</sup> with the text of Manu<sup>3</sup>. For, 5 the text : "Nor, moreover, can there be a transfer or sale of a pledge on account of length of time" has been stated after introducing a pledge for enjoyment thus: "Nor, however, can he get interest on the loan when the pledge is for use". And there being a prohibition against hypothecation or sale in the case of a pledge for use and 10 enjoyment, the creditor cannot acquire ownership. Here also it has been said, viz.: "One for enjoyment of profits does not lapse."

In the case of a pledge for custody, however, Manu<sup>4</sup> has stated (the rule) separately : "A pledge (for custody only) must not be used by force; (and) one (so) using it shall forfeit the interest." 15 Here also it will be said hereafter<sup>5</sup>: "There shall be no interest if a pledge for sale custody is used." The text : "A pledge when doubled lapses" has been stated with reference to a pledge for custody. Thus everything is without a contradiction.

#### Viramitrodaya.

20 Every month in the case of a pledge<sup>6</sup>, so has been stated<sup>7</sup>; there in regard to pledges, the Author states special rules upto the end of the chapter

#### Yajñavalkya, Verso 58.

There, a pledge is of four kinds, as differentiated by the several elements<sup>8</sup> of character, kind, time-limit, and form. So also Bṛhaspati<sup>9</sup>: "A pledge is termed *bandha*, and is declared to be of four sorts; movable or immovable; to be kept only, or to be used; to be released at any time, or limited as to time; stated in writing, or stipulated (orally) before witnesses". By reason of its being indicated as to its four-fold nature 25 by regard to its character, etc., each as the four kinds such as movable, immovable, etc., and thus of four kinds. "Stated in writing", i.e., having an evidentiary support stronger than witnesses. Other texts,

1. i. s. of Yajñavalkya.

2. VIII. 143 i. s. the one referred to above.

3. Ch. VIII. 144.

4. Verse 59 further on.

5. Verse 37 above see p. 763, 1. 26.

6. Ch. XI. 17.

however, are to be interpreted as not to contradict this; this is in short the import.

If after the principal amount has become doubled it is not redeemed by the debtor, then the right of the debtor lapses. *Kālakṛtah*, 'that with a time limit', i.e., one for which a period has been fixed, i.e. 'if by such and such a date the pledge is not redeemed by me then it becomes your property by right of ownership', thus with a time limit agreed upon. A pledge to be used or for custody only of this sort; *Kāle*, 'at the time', i.e., at the time fixed in that manner, upon the debtor not making the payment back of the debt, *mnṣyεt*, 'shall lapse', i.e., will be removed out of the ownership of the debtor. This is the meaning according to the *Mitāksharā* and others.

The revered Author of the *Ratnākara*, however, maintains that this text is to be differently interpreted: as in the case of transactions—such as regarding bronze, etc., where no agreement was made, there, without the consent of the debtor, dealing with the property as his own by the creditor is not seen generally. That interpretation is thus: where the debtor himself stipulates by a declaration thus, 'When the amount becomes doubled and I do not redeem the pledge, then this (pledged article) will indeed be yours', then after the amount has become doubled and no redemption has taken place, the right of the debtor becomes extinct. Here the reason is *Kālakṛtah*, 'with a time-limit'—where a time has been fixed at which one's ownership will become extinct and the right of ownership of the creditor will spring up—such a pledge becomes lapsed by the time fixed.

A pledge with possession for the enjoyment of the fruit, however, where no time is fixed, does not lapse even by thousand years. 'When it becomes double, it has to be redeemed by me' with such an agreement finally made where a pledge was deposited by the owner, i.e., a pledge for custody, such a pledge, when the amount has become doubled and is not redeemed, lapses. Double is indicative of the highest limit of the increase.

A pledge for possession, however, although thus stipulated for, if it becomes doubled on account of depreciation or investment, does not lapse even if not redeemed. *Kālakṛtah*, 'with a time limit' i.e., where a time limit has been made, such as, 'within each period if it is not redeemed, then it will be yours indeed', and the like stipulation, when not redeemed, the entire pledge lapses. Thus the clause 'when the amount is doubled' should be taken as stated. In the case of a conflict with the usage of the *Sāṅkhya*, however, it should be taken as

indicative by implication of a particular period of time. Such an interpretation, moreover, appears to be better.

In regard to the expression *pranaśyet*, 'lapses', Brhaspati states a special rule: "When the time (for payment) has passed, and interest has ceased, the creditor shall become the owner of the pledge; but before ten days have elapsed, the debtor is entitled to redeem it". Vyāsa also, "When gold has become doubled on account of the completion of the time in the stipulated period, the creditor becomes the owner of the pledge; after waiting, however, for two weeks." Here the decision is to be reached according as the debtor is well placed or is not well-placed. (58)

### Sūlapāṇi

#### Yājñavalkya, Verse 58.

After the amount has become doubled if the pledge is not redeemed by the debtor, then it lapses e. g. it becomes the property of the person advancing the amount. If a period of time has been stipulated by himself, then when that is reached, it lapses. Vyāsa states a special rule: "After gold has become doubled, by the completion of the interval under the stipulated period, the creditor becomes the owner of the pledge, after waiting, however, for three weeks; during this interval, the debtor may 20 redeem the pledge by paying the amount". (58).

#### Yājñavalkya, Verse 59.

There shall be no interest if a pledge for custody be used, or one for use be damaged. If a pledge is spoiled or destroyed it shall be paid, unless it be by the act 25 of God or the King.

Mitāksharā:-Moreover, *gopyādheḥ*, of a pledge for custody,

e. g. a copper pan, there shall be no interest in

\* Page 40. case of any use (made thereof). Although the use be slight, even a large (amount of)

30 interest would be forfeited, as there is a breach of contract. So also, where the pledge is for possession and use, and the object of enjoyment, such as a hull or a copper pan, which is pledged with interest is damaged i. e. has been rendered unfit for (being dealt with in) any transaction, there is no interest. This is the context.

A pledge which has been spoiled, *nashṭah*, i. e., has undergone deterioration e. g. a copper pot &c. on account of a hole or on account of its being broken &c. should be made as (it was) before and returned. Here a pledge for custody, if damaged, should be returned after it is restored to its former condition. And if it is used also, even the interest shall be forfeited. 5

A pledge for use if spoiled should be made as (it was) before and (then) returned. If it carries interest, the interest should be given-up. When it is destroyed i. e., has perished entirely, such a one also should be paid by paying the price. By paying it, he gets the amount with interest. When he does not pay then (even) the principal amount lapses. Vide the text of Nārada:—"If it is destroyed, the principal lapses unless the loss is caused by fate or the king." Unless it be by fate (superior force) or the king; fate, Daivam, i. e., fire, water, and generally any misfortune &c. Unless it be without the loss caused by superior force and also by the king when it is without any fault on his part. In case where the destruction is caused by fate or the king, the original principal with interest or a fresh pledge should be given by the debtor. As is said: "When land is washed off by a stream, and also when it is taken away by the king, another pledge should be given, or the amount paid to the creditor." Here 'washed off by a stream' is indicative of consequences of a *vis major*. 10  
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## Viramitrodaya.

Yājñavalkya, Verse 59.

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*Gopyādheś*, 'of a pledge for custody', such as copper, silver &c. *upabhoge*, 'on being used', even though very small, *vyddhiḥ*, 'interest', although large, no, 'does not' accrue, by reason of the transgression of the contract. Similarly, *sopakāra*, 'in the case of one for use' e.g., in the case of a cow &c., where the consideration takes the form of enjoyment and use, *tathā hāpīte*, 'is so damaged', i. e. has been rendered unfit for (being dealt with in) any transaction, for that pledge there would be no interest. 30

*Nashṭo*, 'spoiled', by being broken or otherwise, has become entirely unfit for (being used in) any transaction whatsoever, *tinashṭo*, 35

By saying "deterioration even though carefully kept", it has been indicated that the pledge should be carefully kept by the creditor.

## Viramitrodaya.

## Yājñavalkya. Verse 60.

*A'dhēh*, 'of a pledge', *svikarānti*, 'by the acceptance', such as of a pledge for custody by delivering it over, and of a pledge for use, by enjoyment, *siddhiḥ*, 'is the establishment', and not merely by the writing and other means, vide the text of Nārada: "A pledge, however, has been declared to be of two kinds, viz., (of) moveables as well as (of) immovables. Both of these will be deemed to be established if there is possession, not otherwise."

By this, in the text: "In the case of a pledge, a gift, or a sale, etc., the prior alone has preponderance". Proof of possession is stronger, and the conclusion that is deduced is that a prior one without possession, however, although prior is not stronger.

Such a pledge, however, *rakhyamdhōpi*, 'even while carefully protected', if it suffers deterioration in course of time, then another pledge should be placed by the debtor, or the amount of the debt should be paid to the creditor. The word *Api*, 'even', has the sense of opposition. In the case of the cow and the like, if it be lost, by a fatal accident, the principal becomes lost. Here also the usage of the caste alone is the authority. (61).

## Sūlapāṇi.

## Yājñavalkya, Verse 60.

*A'dhēh* 'of a pledge' *siddhiḥ*, 'the establishment.' is by the acceptance i. e. by possession and not by mere intention. So Vyāsa<sup>1</sup>: "A pledge is said to be of two kinds viz.: (of) moveables as well as (of) immovables. Both of these shall be deemed to be established if there is possession, not otherwise" (60).

The Author mentions an exception to the rule<sup>2</sup> "A pledge lapses if doubled, &c."

1. Ch. I. 159.

2. Yājñ. II. 23. See above p. 718

3. The same verse is assigned to Nārada, where it is found at Ch. I. 139.

4. Yājñ. II. 58 (above).

Yâjñavalkya, Verse 61.

In the case of a debt contracted on a Charîtra pledge, the amount must be paid with interest, and in the case of a debt contracted on a chattel delivered as an earnest, he shall pay twofold.

Mitâksharâ—Charitram, *conduct i.e. good conduct.*

Pledge by a charitra is a Charitra pledge.

Exception to Upon (the strength of) that whatever amount  
the rule that 'a has been borrowed and kept for self or given  
pledge lapses to another. This is the purport. Relying upon  
when the debt the good faith of the creditor where a thing,  
is doubled.' even though very valuable, has been made over

by the debtor to the creditor, and only a small  
amount is borrowed, or, where, relying upon the good faith of the  
debtor, the creditor has advanced a large amount to the debtor even  
after taking a pledge of a small value, that amount the king should  
cause to be paid with interest. The purport is this. A pledge of  
this sort does not lapse even though the amount is doubled, on the  
other hand the amount only should be paid (to the extent of the)  
double.

Similarly, satyankârakृtam. Kâra (an act) is the same  
thing as) Karana (making)<sup>1</sup>. The affix Ghâñ (गङ्) is used here to  
denote action. (भाव Bhâva). The making of truth is Satyankârah.  
The augment मुम् (mum) is used under the rule of grammar (6-3. 70)  
“मुम् is the augment of सत्य and अन्त when the word कर follows.”  
That which is made by means of a Satyankâra is a Satyankârikta.  
This is the meaning intended. When even at the time of offering the  
pledge itself it was agreed thus viz “even when the debt is doubled,  
I am to pay the double amount only, and the pledge is not to lapse”  
then the double should be caused to be paid.

\*Page 41.

Another meaning (is this) Where Charitra itself is the  
pledge it is called a charitra-bandhaka. By the word Charitra

1. I. e., the कर which is the expression of action, is used in the abstract sense. कर is the same as करण.

By saying "deterioration even though carefully kept", it has been indicated that the pledge should be carefully kept by the creditor.

### Viramitrodaya.

#### Yajñavalkya, Verse 60.

*Adhēḥ*, 'of a pledge', *svikarandit*, 'by the acceptance', such as of a pledge for custody by delivering it over, and of a pledge for use, by enjoyment, *siddhīḥ*, 'is the establishment', and not merely by the writing and other means, vide the text of Nārada<sup>1</sup>: "A pledge, however, has been declared to be of two kinds, viz., (of) movables as well as (of) immovables. Both of these will be deemed to be established if there is possession, not otherwise."

By this, in the text<sup>2</sup>: "In the case of a pledge, a gift, or a sale, etc., the prior alone has preponderance". Proof of possession is stronger, and the conclusion that is deduced is that a prior one without possession, however, although prior is not stronger.

Such a pledge, however, *rakṣyamāṇopī*, 'even while carefully protected', if it suffers deterioration in course of time, then another pledge should be placed by the debtor, or the amount of the debt should be paid to the creditor. The word *Api*, 'even', has the sense of opposition. In the case of the cow and the like, if it be lost, by a fatal accident, the principal becomes lost. Hera also the usage of the caste alone is the authority. (61).

### S'ūlapāṇī.

#### Yajñavalkya, Verse 60.

*Adhēḥ* 'of a pledge' *siddhīḥ*, 'the establishment,' is by the acceptance i. e. by possession and not by mere intention. So Vyāsa<sup>3</sup>: "A pledge is said to be of two kinds viz: (of) movables as well as (of) immovables. Both of these shall be deemed to be established if there is possession, not otherwise" (60).

The Author mentions an exception to the rule<sup>4</sup>: "A pledge lapses if doubled, &c."

1. Ch. I. 139.

2. Yaj. II. 93. See above p. 718

3. The same verse is assigned to Nārada, where it is found at Ch. I. 139.

4. Yaj. II. 58 (above).

## Yājñavalkya, Verse 61.

In the case of a debt contracted on a Charitra pledge, the amount must be paid with interest, and in the case of a debt contracted on a chattel delivered as an earnest, he shall pay twofold.

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Mitāksharā—Charitram, conduct i.e. good conduct.

Pledge by a *charitra* is a *Charitra* pledge.

Exceptioo to Upon (the streogth of) that whatever amouot  
the role that 'a has been borrowed and kept for self or given  
pledge laps ea to another. This is the purport. Relying upon  
wheo the debt the good faith of the creditor where a thiog,  
is doubled.' even though very valnable, has beeo made over

by the debtor to the creditor, and only a small  
amouot is borrowed, or, where, relying upoo the good faith of the  
dehtor, the creditor has advanced a large amouot to the debtor eveo  
after taking a pledge of a small value, that amount the kiog shhould  
cause to be paid with ioterest. The purport is this. A pledge of  
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double.

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Similarly, *satyankārakṛtam*. *Kāra* (an act) is the same  
thing as) *Karana* (making)<sup>1</sup>. The affix *Ghaṇī* (गृ) is used here to  
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pledge itself it was agreed thns *et* “even when the debt is douhled,  
I am to pay the double amouot only, and the pledge is not to lapse”  
theo the double shhould be caused to be paid.

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\*Page 41.

Another meaning (is this) Where *Charitro* itself is the  
pledge it is called a *charitra bandhaka*. By the word *Charitra*

1. i.e. the गृ which is the expression of action, is used in the abstract  
sense. गृ is the name of गति.

is expressed that unseen<sup>1</sup> virtue known as *apūrva*, which is born of a bath in the Ganges or of (the performance of) the *Agnihotra*<sup>2</sup>.

Where that (i.e. the *Charitra*) itself is pledged and money is received, then the doubled amount itself is to be returned, but there is no lapse of the pledge.

While discussing the pledge, another (kind of loan) is being described, *satyankārakṛtamiti*. Whatever a thing, such as a ring &c. has been placed in the hands of another with a view to complete the agreement of sale and purchase, the double of that thing should be paid if the agreement is broken. Even there, if the person by whom the ring &c. is deposited himself breaks the contract, he should give the thing itself. If the other party commits a breach of the contract, then a double of the ring &c. itself should be returned.

### Viramitrodaya

Yajnavalkya, Verse 61.

*Charitrena*, 'by *charitra*', by good conduct, *bandhakam Apyam*, 'taken as a pledge', i.e., by the creditor accepted to himself a thing of great value, or of a value less than the loan, there the king or the like should compel the debtor to pay the amount together with interest. When the amount becomes doubled, the pledge lapses.

*Charitra*, i.e., religious merit, where has been made (the subject of) a pledge, there the obligation as a debt, of the religious merit does not become extinct, but the money must be caused to be paid together with the interest. This is the meaning.

25      'Satyankara—'even when the amount has doubled itself, the pledge will not become yours, but on the other hand I am liable to pay the doubled amount itself'—under such an agreement when an article is

1. Mark this term. अपूर्व is sometimes expressed as अपृष्ठ. It is that unseen virtue which is a relation superinduced, not before possessed, unseen but efficacious to connect the consequence with its past and remote cause and to bring about at a distant period or in another world the relative effect. All the Vedic injunctions laying down the performance of ceremonies and rituals which do not bear any direct tangible fruit derive force from their capacity to create this अपूर्व.

2. अग्निहोत्र is the initiation and maintenance of the sacred fire by offering oblations to it. This is of two kinds: अप्य—ordinary, and अप्याद—occasional.

pledged; *Dwigupam pratidāpayet*, 'he must be made to pay the double'; i.e., otherwise the pledge lapses. The Sāmpradāyikas, however, construe it that this has been stated by the Author in regard to a position which arises when for the purpose of facilitating the arrangement regarding a transaction of a gift or a sale, an article such as a ring &c. has been made over into the hands of the seller, and the seller has exceeded the limits of the arrangement, he should pay to the buyer the double. If, however, the transgression is made by the buyer himself, then he also should pay double the amount to the seller. (61)

Sūlapāni

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Yājñavalkya, Verse 61.

*Chūritryam*, 'religious merit', such as the maintenance of the perpetual fire *agnihotra*, a bath in the Ganges etc.—by pledging that itself what has been borrowed, that must be paid back with interest.

Where a pledge of small value with the undertaking "Truly I shall 15  
redeem this" has been given, that in the long period is to be paid back double, and must not be sold by the creditor. This is the meaning.

*Charitrabandham* is the reading by Visvarūpa (61).

Yājñavalkya, Verse 62.

A pledge should be restored to the debtor when he 20 comes to redeem it, otherwise the creditor would be (liable as) a thief. If the creditor be not available, the debtor may pay the amount to (a member of) his family and take back his pledge.

Mitiksharā:—Moreover, *upasthitasya*, of one who has 25

Redemption come for redeeming his pledge by paying the amount, *ādhirmoktawyah*, the pledge should of a pledge. be restored, by the creditor, and it should not be detained out of a greed for interest.

Anyathā, otherwise, i.e. if it is not restored, being just in the position of *stenah*, a thief, he would be punishable like a thief. When, however, the creditor is absent, after placing the dhanam, amount, together with interest kule, in the family, i.e., in the hands of his relatives, the debtor should take back his own pledge.

## S'flapûpi.

## Yâjñavalkya, Verse 62.

To a debtor who has come to redeem the pledge, after taking the amount together with interest the creditor should release the pledge; 5 otherwise he would be regarded as a thief.

If the person who had accepted the pledge be not available, the amount should be placed i. e. deposited in his family, and he should get back the pledge. (62).

If, however, the creditor be absent and there are no relatives 10 of his (who are ready) to take the amount, or when the creditor is absent and the debtor wishes to pay the amount by selling the pledge, then (the question would be) what should be done? (Anticipating this) the Author says

## Yâjñavalkya, Verse 63 (1).

15 Or appraised at its value at that time the pledge will remain there without interest.

Mitâksharâ :—Tatkâleti, after ascertaining the value which the pledge had at that time, he may deposit the pledge even tatra, there, i. e. with the creditor, without interest; it does not carry 20 interest thereafter, till the creditor restores the pledge after taking the amount or cause to be paid to the debtor an amount equal to its value.

When it was settled at the time of (advancing) the loan that 'even if the debt were doubled, a double amount only should be 25 taken, and the pledge should not lapse', then when the debt is doubled and the debtor is not near (the question would be) what should the creditor do? Anticipating this, the Author says

## Yâjñavalkya, Verse 63 (2).

(Or the creditor) may sell (the pledge) in the 30 presence of witnesses even without (the presence of) the debtor.

Mitâksharâ :—dhâranikât vinâ, without the debtor, i. e. when the debtor is not present, the creditor should recover the

amount after vikriya, selling the pledge in the presence of witnesses and also of his relatives.

The word *wā*, or, is intended to lay down the rule of distribution in the optional<sup>1</sup> case that would arise. It is in this way: When it has not been agreed at the time of (advancing) the loan that 'even if the debt were doubled, the amount only should be taken and the pledge should not lapse,' then under the text<sup>2</sup> 'a pledge shall lapse when doubled &c.' the pledge shall lapse. In the case of (an express) contract, however, the rule laid down here (should be followed). 10

### Viramitrodaya.

#### Yājñavalkya, Verses 62 & 63

To a debtor who has come for paying off the amount and redeem the pledge *Adhīk*, 'the pledge', *moktaryah*, 'should be released', by the creditor, to the debtor, *anyatād*, otherwise, through covetousness for interest, if it is not released, the creditor, i.e. *stenah* 'a thief', i.e., becomes liable to be punished like a thief. This rule as to obstructive non-release is to be understood as he has the power<sup>3</sup>. The general exception viz. "unless it is caused by superior force or the king" holds everywhere where it is fit to be applied. 15

*Prayojake*, 'the creditor' i.e., the one who advanced the loan, *asati*, 'he not available', i.e., he dead, or has gone abroad, or has become an ascetic; *kule*, 'in the family', i.e., among those who are entitled to take the assets of the creditor, in the order commencing with 'the sons and the rest', *dhanam*, 'the amount', together with interest, *nyasya*, 'having taken', i.e., having deposited, his own 'pledge he should get back', *adhim dñuyat*. (62). 20

If, however, there is none whatsoever competent to take the assets of the creditor who has gone abroad, then as evaluated at that time, the pledge shall remain *tatra*, 'there', i.e., in the house of the creditor advancing the loan, without (carrying) interest. The meaning is, that when the money is not accepted owing to the fault of the creditor, after that time interest will not run. 25

*Dhāranaka*, 'the debtor', at the time fixed for the redemption of the pledge, is not near at hand, then the creditor, should sell the pledge 35

1. See note 4 on pp. 708-709 above.

2. Verse, 55.

3. i.e. it applies when the creditor taking advantage of his position to dictate refuses the delivery back.

in the presence of witnesses. The rule is, that in such a case after taking (back) his own amount, the balance he should deliver over to the king. By the use of the word *api*, 'even', are included those who are entitled to the estate of the debtor. (62, 63).

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## S'ûlapâni.

## Yâjñavalkya, Verse 63.

If the pledge is, on any account, not given (back) to the debtor, then being assessed for its value at that time, it shall remain at that, at 10 the house of the taker of the pledge.

When however, *dhârapako*, 'the creator of the pledge' is not available, then after selling it, the creditor may take his own amount, and pass over (the remainder) to the king. (63)

## Yâjñavalkya, Verse 64.

15 When, however, a debt under a transaction of pledge has become doubled (by the accumulation of interest), then the pledge shall be returned after double the principal amount has been received (by the creditor) from the profits.

20 Mitâksharâ :—*Yadâ, ihen,* the amount advanced, *dwigunibhûtam*, has become doubled, *tadâ,*

The Author means *then, tadutpanne*, from the profit, i.e., from 25 a special case the receipts derived from the pledge, *tadâdhau*, of a usufructuary after the pledge was made and when *dwigune*, a double, has been *pravishṭe*, received, by the creditor, the pledge should be restored by the

creditor. Or if the debt has become doubled without possession (being transferred) either on account of an agreement at the beginning that 'when the pledge is delivered and the debt has been 30 doubled you should restore the pledge', or on account of some other reason the amount has become doubled, then, after the pledge has been made over to the creditor for enjoyment, it should be restored when the profits recovered from it make up the doubled amount. If more be enjoyed, that too should be restored. This text is intended 35 to lay down the rule that a pledge is to be enjoyed only for paying

off entirely the original loan together with interest. It is called in popular language a *kṣhayādhī*, a pledge where the liability is diminished.<sup>1</sup>

Where, however, it was agreed that possession of the pledge was intended only for (securing) the interest,

\* Page 42. there even if the amount has increased more than the double, the pledge will be used only until the payment of the original loan. This very thing has been made clear by Brhaspati : "The debtor shall get back the usufructuary pledge the time for which has been matured or after

paying off the principal amount ; if it has exceeded, then the creditor does not get the amount. The debtor also will not get back the pledge except with mutual consent." The meaning of this text is this: That wherein the profits are to be enjoyed is called a usufructuary mortgage or pledge. That moreover is twofold, that

which is intended to pay off the original principal together with the interest, and the one to pay off interest simply. Of these also, in the case of a mortgage which is intended to pay off the original principal and the interest, the debtor shall get back the pledge when the

time for (payment of) it becomes matured (*Pūrṇakālam*), i.e., when the original amount together with the principal has been received by the creditor, then the debtor shall get back the pledge. In the case of the pledge which is intended for reduction of the interest only, the debtor shall get it back after paying off the principal amount.

Sāmaka is the same as *sama* (eqnal), i.e., equal to the original principal. The (same) Author mentions an exception to this: 'if it has exceeded without mutual consent'. It, i.e. the pledge, has exceeded, i.e. has transgressed the limit, i.e. if the profits have exceeded even the interest, then the creditor will not get the amount.

The creditor does not get the principal amount, i.e. the debtor shall get back the pledge even without paying the original amount advanced.

If, however, the pledge has not been exceeded, and is even insufficient for (paying off) the interest, then even after paying off the principal, the debtor will not get back the pledge, but will get it only after paying away the balance of interest. Again the (same)

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1. Cf. the *Mortuum radium* of English Equity.

Author mentions an exception to both these rules. The text 'if it has exceeded, &c.' has been mentioned as applying in the absence of a mutual agreement between the creditor and the debtor. With mutual consent, however, even if the pledge be exceeded, the creditor may enjoy it until the original principal is paid, and also (on the other hand) even if it be insufficient, the debtor gets it back by the payment of the original principal only.

Here ends the Chapter on the Recovery of Debts.

### Viramitrodaya

10 The Author states a special rule in the case of a pledge with possession.

Yajñavalkya, Verse 64.

If *Rnam adhau*, 'a debt under a pledge', on account of enjoyment, *dwigupisiddham*, 'has become doubled', then when the amount so doubled has passed to him, the pledge should be released by the creditor. This is the meaning.

This is what is called a *Kshayiddhi* 'a self-effacing pledge.' This, moreover, would be so when it has been so agreed upon by the creditor, as it is based on the same principle as the text of *Vishnu* viz.: "Even if the maximum amount of interest is paid, the mortgaged article, if it is immovable (shall not be returned), unless there be an agreement to that effect."

One who is afraid of an illegality, should release the pledge; vide the text of *Bṛhaepati*: "Where the use of a pledge (is continued) after twice the principal has been realised, (receipt) of the compound interest and the exaction of the principal and interest, that is (called) usury, and is reprehensible."

It is also said that except under a special agreement it does not carry interest. (64)

30 Here ends, in the commentary on Yajñavalkya,  
The Chapter on the Recovery of Debts.

Sūlapāṇi.

Yājñavalkya, Verse - 64.

"When the profits of this reach double the quantity of the amount, my pledge is to be released", thus saying when a pledge is offered, then when from its income double the amount (advanced) has been realized, then the pledge is to be released and not to be enjoyed. (64) 5

## Chapter IV.

### THE LAW OF DEPOSITS.

Yājñavalkya, Verse 65.

Property which being placed in a box is delivered into the hands of another without being described, is called a deposit; (and it) should be returned in the same condition (in which it was when delivered). 10

*Mitāksharā* :—A thing which holds the things deposited, being different from it, is a Vāsanā, box, a receptacle, e.g., a Karanda, &c. dravyam; described. property, wāsanastha, which is placed in it, the particulars as to the quality and the quantity of which anākhyāya, is without being described i. e. mentioned, and (after it is) sealed, arpyate, is delivered, in confidence for safe preservation, anyasya haste, in the hand of another, that property is called, aupanidhikam, deposited property. As says Nārada: "That (property) which being under a seal is deposited without being counted or known, should be known as an upanidhi; while it is known as nikṣhepa where it is counted." 15 20 25

Pratideyam tathaiva tat, should be returned in the same condition. The person with whom it has been deposited, should return i.e. restore it back to the depositor in the same condition in which it was delivered bearing the seals as before.

## S'ūlapāni

Yājñavalkya, Verse 65.

Vāsanam, 'a receptacle' to hold the deposit, such as a casket etc.; placed there without detailing its form, number etc.; what is deposited in another's hand, that is *aupazidhikam*, 'deposited property'. That, *talhaira*, 'as it was', i. e. marked with the seals etc. should be returned. (65)

The author mentions an exception to the rule as to restoration

Yājñavalkya, Verse 66 (1).

That, however, which has been carried away by  
10 (an act of) the king, Providence, or thieves shall not be caused to be restored.

Mitāksharā :—*Tam, that, deposit, which was carried away rājñā daivena, by (an act of) the king or by*

An exception to the rule as to restoration of an *upanidhi*. *rājñā daivena, by (an act of) the king or by Providence e. g. by floods &c. or by thieves, taskaraib, and has (thus) perished, na dāpyah, he shall not be compelled to restore. Of him with whom it was deposited, vis. the creditor, the*

20 self, provided it (*i. e.* the loss) was not brought about<sup>1</sup> by fraud. As says Nārada<sup>2</sup> :—"If a deposit is lost, together with the property of the depositary, the loss shall be the depositor's. The same rule shall obtain, if the loss has been caused by fate or by the king, unless the depositary should have acted fraudulently."

1. See also Kātyāyane Verse 594.

2. The word *Dhanis* (दानी) here stands for the debtor who is the real owner of the thing deposited. The meaning is that if a loss takes place under the conditions specified the loss is that of the depositor and not of the depositee. Cf. s. 153 of the Indian Contract Act.

3. Mark the expression—*सिद्धान्तेन*. If it were the object of the Author simply to indicate direct fraud on the part of the bailee the expression *सिद्धान्तेन* would have sufficed. But the suffix *प्रवृत्ते* is purposely used with a view to cover the case not only of direct fraud but of any fraud whether direct or indirect to which the creditor was a privy.

4. Ch. II. 9.

The Author mentions an exception to the above rule

**Yâjñavalkya, Verse 66 (2).**

When, however, the loss occurs after demand and non payment<sup>1</sup> the depositary should be fined and compelled to pay an (amount) equal (to the deposit). 5

Mitâksharâ :—Wheu, márgite, *demanded*, by the owner if be do not pay, then after that time, even if

\* PAGE 43. bhresho, *the loss*, i.e. the destruction occurs on account of the king &c., the bailee should be made to pay to the owner the amount as determined by (the value 10 of) the original, as also to the king an equal fine.

**S'ûlapâpi. 66.**

**Yâjñavalkya, Verse 66.**

If, when demanded and not delivered, its bhresho, 'loss', i.e. destruction, takes place, then he should be made to pay, and also a fine the king shouold take for himself. If it is lost owing to the fault of the depositor of the bailment, then he himself must pay, as says Kâtyâyana<sup>2</sup>: "By whosesoever fault is the property lost or is taken away, he must be compelled to make good that amount together with interest excepting when caused by fate or the king." (66). 20

The Author mentions a penalty for (wrongful) appropriation.

**Yâjñavalkya, Verse 67 (1).**

If he, (i. e. the bailee) of his own will,<sup>3</sup> makes a living, he shall be punished, and also made to pay it with the increase. 25

Mitâksharâ :—He who, swechchchayâ, *of his own will* i. e. without the permission of the owner,<sup>4</sup> ajivati, *makes a living* i.e.

1. At p. 42. I. 30 इने is a misprint. It should be अद्देने—इने.

2. Verse, 594.

3. In Roman law the use of a thing deposited without the consent of the owner constituted *furtum* (See Justinian Bk. IV. I. 6.). In English law such use would not be larceny without the intent to deprive altogether the owner of his property in the deposit.

4. i. e. without the consent or permission of the bailor.

appropriates or deals with it by lending (at interest) with a view to (make) a profit (out of) the money<sup>1</sup> deposited, should be fined having regard to the extent of the appropriation and also of the profit (made by him); and he should also *dāpyah, be made to restore*, the deposit *sodayam, together with the increase*, i.e. in the case of an appropriation, together with interest, and in the case of a loan advanced, together with the gains realised (in the transaction). The (special) rule of interest (in such cases) has been stated by Kātyāyana<sup>2</sup>: “A deposit, the balance of interest, (an article) sold, and (the price of) a thing purchased, if not paid on demand shall bear interest at five per cent.” This rule moreover, is to be observed where there has been (complete) appropriation. In case, however, where it is lost on account of neglect or ignorance, the same (Author) has mentioned<sup>3</sup> a special rule viz.—“Where the deposit has been appropriated and used up, he should be made to pay (it back together) with interest and an equal amount if neglected; where it (the deposit) has been lost on account of ignorance, he should be made to pay a little less.” ‘Little less’ *Kinchinniyānam* i. e. less by a fourth part.

The Author extends the rule regarding a deposit, to the cases  
20 of *Yāchita* &c.

### Yājñavalkya, Verse 67 (2).

The same law applies in the cases of *Yāchita*,  
*Anvāhita*, *Nyāsa*, *Nikṣhepa*, and (such) other kinds (of deposits).

25 **Mitākṣbarā:**—When, on festive occasions such as a marriage &c. clothes, ornaments &c. are begged for and taken away it is (called) a *Yāchitam*.<sup>4</sup> Where a thing is placed in the hands of one, and by him also has thereafter (*anu*) i. e. afterwards further on; been placed in the hands of another with (the direction): “(Please) give it to the owner” it is (called) an *Anvāhitam*. What is known as *Nyāsa* is a delivery to a member of the house in the absence of the owner and without being shown to him, with (the direction) “this

1. The original word is गद् it may also mean a thing.

2. Verse, 506. 3. Verse, 597.

4. Cf. the *Commentation of the Roman Law*.

5. There is a mistake in the print of the text on p. 43, l. 14. The correct reading is न्यासमित्राद्वयः and not न्यासमित्रे द्वयः; *Nyāsa* is a secret deposit handed over to some member of the house in the absence of the owner.

is to be made over to the owner of the house." A delivery in his presence, however, is a *Nikshepa*.

By the (use of the) word *ādi*, and others, are included cases of a deposit *Nyasta* e.g., of gold &c. in the hands, of a goldsmith &c. for preparing a bracelet &c. as also of mutual bailments<sup>1</sup> as e.g. in cases where there occurs a need of each other with words "you should keep this mine, and I shall keep this yours," as says Nārada<sup>2</sup>: "The same law applies in the case of *Yāchita*, *Anvāhita* and other such deposits, articles made over to an artist, *Nyāsa*, and *Pratinyāsa* deposits." In the case of these i.e. the *Yāchita* &c. this very rule i.e. the rule in the case of a deposit, viz. of repayment &c., should be understood (as being applicable). 10

Here ends the Chapter on Deposits.

### Viramitrodasya

In regard to *Nikshepa* or deposit, a title at law, the Author says 15

*Yājñavalkya, Verses 65, 66, 67.*

*Vāsanam*, 'a receptacle' such as a casket or the like, fit to hold a depositor article; property lying there, the quantity &c., *anahyāgya*, 'without being declared', i.e., without mentioning, *anyasya haste*, 'in another's hand', for protection and out of confidence, *arpayate*, 20 what 'is delivered', *tadaupanidhikam*, 'that is called an *upanidhi*' a special kind of deposit.

The general characteristics of a *nikshepa* deposit, however, should be noted as stated by Nārada<sup>3</sup>: "Where one, out of confidence entrusts his own property with another without suspicion, it is called by the wise 25 a deposit, a title of law". "Of a good family, of good conduct, well-versed in law, and a truth-teller," these and others stated by Manu<sup>4</sup> are only an extension of (the qualities for) the confidence being reposed.

There, *upanidhikam dravyam*, 'property which has been deposited as *upanidhi*', *tathair*, 'as it was', i.e., without declaring or counting, as 30

1. A *Pratinyāsa* is a mutual bailment both parties exchanging deposits with one another.

2. Ch. II. 14.

3. Ch. II. I.

4. Ch. VIII. 180.

before marked by the seals &c., *pratideyam*, 'is to be returned' to the depositor. (65)

There, an *upanidhi*, deposit, if either by the king, by Providential dispensation such as by fire, or by a thief, is taken away, in such cases the acceptor of the deposit is not to be compelled to make good to the depositor.

If, however, when *mārgite*, 'eonght' i.e., demanded by the depositor, even then *adatte*, 'if not given', and in regard to that property a loss or deterioration occurs as being caused by the king or Providence, that *upanidhi* by its value, to the depositor and an equal amount as five to the king, the acceptor must be compelled to pay. By the use of the word *cha*, 'and also', is included the depositor.

*Svechhayd*, 'of his own will', and not with the consent of the depositor, *tam*, 'that', i.e., the *upanidhi*, deposit, *dīkṣān*, 'makes a living upon', i.e., appropriates it by use for making a profit of the interest, *rājñā dandyāḥ*, 'he should be punished by the king'; *tam* 'that', *upanidhim*, 'deposit', *sodayam*, 'together with interest', he should be compelled to pay to the depositor.

Here moreover, Kātyāyana<sup>1</sup> states the rule as to interest: "A *nikeśpa* deposit, the balance of interest, the proceeds of a sale, as also of a purchase, when being asked for if one does not pay, each carries interest at five per cent".

Manu<sup>2</sup>: "What was carried away by thieves, or drowned in water, as also what was consumed by fire, one need not pay; provided one does not appropriate any portion." Collecting together, i.e., taking a little, and the remainder he deposits elsewhere, or neglects the entire quantity, on the ground 'I am not to be responsible for it', then the whole must be made good. This is the meaning. Vyāsa<sup>3</sup>: "Where the deposit has been appropriated and used up, he should be made to pay it, together with interest, and an equal amount if neglected; where it has been lost on account of ignorance, he should be made to pay a little less."

Manu<sup>4</sup>: "If by false means any man deprives another of his property, he along with his accomplice, shall be publicly punished by the various modes of corporal chastisements, *Vadha*, 'chastisement', such as beating, &c.

1. Verse 506.

2. Ch. VIII. 190.

3. Vijnāneśvara assigns this text to Kātyāyana, while here and in Pariśara Madhava it is assigned to Vyāsa. See Kātyāyana Verse, 507.

4. Ch. VIII. 194.

Yāchita &c. Ayam, 'this', i.e., the one stated in connection with the upanidhi deposit, vidhī, 'rule', i.e., the procedure, such as the liability or the non-liability to pay on occasions effected by the king or fate, should be understood in the case of Yāchita and like other kinds of deposits. Where, on the occasion of a marriage or like festivity, clothes, ornaments, etc., are asked for and borrowed on an undertaking for repayment, that is called Yāchitam. Anvāhitam, when the owner has deposited a thing with one, and by that one also, (any) afterwards deposited further on with another under the direction of the depositor. Nyāsa is that where without showing to the master of the house, and even in his absence, a deposit with his people with the words '(this is) to be made over to the master of the house.' Handing over an article to an artisan for preparing into an ornament, after describing it in his presence and giving it over to him is Nikshepa.

By the use of the word *A'di*, 'and like others' are included things bought (but not paid) and like others mentioned by Gautama. For while stating the liabilities, under the text 'the sons should discharge', Gautama says: "An open deposit, a sealed deposit, a loan for use, an article brought on hire, and a pledge, when lost without the fault of the holder, (shall not involve) any blameless person." Arakritam, an article 'brought on hire', i.e., brought by paying a rent.

When the depositor is available, the deposited article must be delivered over to him, says Brihaspati: "By whomsoever has an article been deposited, and by whatever process, to him and in the same manner should it be delivered over to him and not to any other". "Any other", i.e., successor, such as the son and like others.

Manu: "He who delivered himself, when dead, and the bailee delivers it back to his successor, he must not be charged by the king, nor by the cognates of the depositors."

Under a special agreement (to that effect), however, even when the depositor is living, delivery to the successor may take place in regard to the Yāchitās, which has been almost described above; so says Kātyāyana: "After the (stipulated) time has arrived, and the purpose is over, when he does not deliver although asked for, if the article is lost

1. Ch. XII. 38.

2. Ch XI. 39.

3. अद्यनितपर्यन्तमेव च, हादन.—Price entirely or partly not paid for.

4. Ch. XII. 9.

5. Ch. VIII. 167.

6. Verse, 607.

or even taken away (by any other), then the borrower should take the price and offer it". 'Lost'—even by an act of God.

Thus in the Commentary on Yājñavalkya reads the Chapter on Deposits.

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### S'ūlapīṭi.

#### Yājñavalkya, Verse 67.

The *Aupanidhi* deposit, if the bailee puts to use without the consent of the depositor then he should be fined in an equal amount by the king, and the amount also should be caused to be paid to the depositor together with interest.

*Yūchīmī*, ornaments &c. brought for decoration. Where the right of ownership is given it is *Nyāsa*: "Where through fear of robbers, king, and the enemies, and also for deceiving the *Dūyildas*, a chattel is deposited in the house of another man, that is called a *Nyāsa*" thus characterised by Br̥haspati<sup>1</sup>. "Where one's property, out of confidence one deposits with another without any suspicion, that is called *Nikshepa* by the wise" thus stated by Nārada<sup>2</sup>. In regard to these also, the rule viz. "He is not to be made to pay what is taken away by you," is to be understood to apply. Vyāsa<sup>3</sup> states a special rule: "Where the deposit has been appropriated, he should be made to pay (it back together) with interest, and an equal amount if neglected; where it has been lost on account of ignorance he should be made to pay a little less."

Here ends the Chapter on Deposits.

### Chapter V.

#### 25 OF THE WITNESSES.

It has been said above<sup>4</sup> that 'evidence has been laid down to consist of a writing, possession, and witnesses.' Of these, (the law as to) possession has been examined. Now begins an examination of the nature of (the rules of law as to) witnesses.

I. Ch. XII. 2.

2. Ch. II. I.

3. See note 3 on p. 842 above.

4. Yājn. II. Verse. 22, p. 743 ll. 16-18.

One becomes a (proper) witness by his actually having seen or heard (a thug), as says Manu<sup>1</sup>:—"Witness Characteristics Evidence is admissible if (it is) in accordance with of witness. what has actually been seen or heard (by the witness)." Such a witness, moreover, is of two kinds, appointed and unappointed. When marked as a witness, he is called an appointed, and when not marked, an unappointed. Of these the appointed is of

Kinds of witnesses. five<sup>2</sup> kinds and the unappointed of six, and thus these witnesses are of eleven kinds. As says

Nârada<sup>3</sup>:—"Eleven varieties of witnesses are distinguished in law by the learned. Five of them are known as appointed, and the other Six as unappointed." Their (further) classification has also been indicated by the same Author<sup>4</sup>:—"A subscribing witness, one who has been reminded, a casual witness, a secret witness, an indirect witness, these are the five sorts of appointed witnesses".

\* Page 44.

Kâtyâyana<sup>5</sup> has described the characteristics of the subscribing and other witnesses (thus): "One who was invited by the claimant<sup>6</sup> himself and who has been entered into the document, is called a subscribing witness, and who has been made to remember without the document (being shown to him) (371)." The same Author has explained the meaning of the expression 'Made to remember without the document' (*smâritah patrakâdrite*) thus: "He, moreover, who for the purpose of establishing a transaction, is reminded again and again by the claimant after (his) having seen (the document evidencing) the transaction is called here a witness 'who has been reminded' (372)." He, however, who having arrived by chance, has been made (to subscribe as) a witness is a *casual witness*. The same Author has pointed<sup>7</sup> out a distinction among

1. Ch. VIII. 74.

2. Here there is an error in the print in the Sanskrit text on p. 43. l. 25.  
It should be तत् तुः प्राप्तिः अतथ विषय इत्येकाद्यापि:

3. Ch. I. 149.

5. Verses, 371-373.

6. वापि—*the party who sets up a claim.*

4. Nârada Ch. I. 150.

7. Verse, 373.

these witnesses even when they have not subscribed to the document : “One (specially) called on the occasion, and one who had gone (merely) by chance, these two (kinds of) witnesses can establish the claim of the plaintiff, although they are not entered into the 5. document (373)”. Moreover : “He is called a *secret witness* who while remaining concealed, has been made to hear distinctly the words of the defendant by the plaintiff for establishing his claim (374)” And “He is called an *Indirect witness* who, either from direct or 10 hearsay knowledge corroborates broadly the statements of (actual) witnesses (375).”

Nârada<sup>1</sup> has also pointed out the six kinds of the unappointed (witnesses) : “The village, a judge, a king ; one commissioned<sup>2</sup> for (special) duties by the disputants, and one deputed by the claimant. In family quarrels, members of the family shall 15 (also) be witnesses.” The mention of ‘a judge’ is indicative by implication also of ‘a writer’ and ‘a *Sabhyâ*’. ‘The writer’, the judge, the *Sabhyâ*s have, in order, been laid down as witnesses when the case is under investigation by the king.”

Such witnesses ; of what kind and how many will (these) be ? 20 (Anticipating such a question) the Author says

### Yâjñavalkya, Verses 68, 69.

Men devoted to religious austerities, men liberally disposed, men of high families, truthful men, men (chiefly) devoted to religious observances, straightforward men, 25 men blessed with sons, and men possessed of wealth (68)

are to be known as competent witnesses, (provided they are) not less than three, and devoted to the performance of Srâuta<sup>3</sup> and Smârta rites ; each respectively

1. Ch. I. 151-152.

2. कार्येन्द्रिकाः—“कार्येन्द्रिकाः नसे वः” is another reading & Dr. Jolly translates it as “one acquainted with the affairs of the two parties.”

3. See p. 636 n. 4 above.

4. Kâtyâyana, Verse. 355.

5. Srâuta and Smârta rites are those laid down in the Srnti and the Sutras. See Yâjñavalkya Âchâra, Verse 97 and Vijñâneswara’s prefatory remarks thereon, pp. 267-268 above.

according to their caste or class, or all for all (castes and classes).

Mitāksharā :—Tapswinah, men denoted to religious austerities i. e. habitually devoted etc.; dānasilāḥ, liberally disposed, i. e. devoted to making donations; kulināḥ, of high families, i. e. born in high families; satyawādināḥ, truthful, i. e. having a character for truth-speaking; dharmapradhānāḥ, devoted to religious observances, and not to observances actuated by Artha<sup>1</sup> and Kāma; ṣṭavah, straitforward, not crooked; putrawantāḥ, blessed with sons, i. e. with living sons; dhanānvitāḥ, possessed of wealth, i.e. possessed of considerable wealth such as gold etc.; śrautasmārtakriyāparāḥ, devoted to the performance of śrauta and smārta rites, i. e. devoted to the performance of ordinary and special rites.

Men of this description, tryavarāḥ, not less than three, are (accepted as) competent witnesses. Those

The number of than whom three will not be below i. e. less, are witnesses. tryavarāḥ, men not less than three i. e. men who are not on this side of (the number) three.

The meaning is, that for more than this, their number would be according to the requirements. Without going outside the caste, is according to caste, yathājāti. Castes such as Mūḍhāvasikta<sup>2</sup> and others born of descending<sup>3</sup> or ascending unions. Among these, for the Mūḍhāvasiktas, the witnesses shall be the Mūḍhāvasiktas. The same (rule) should be observed with reference to the Āmbayīhas and others.

1. The three Purushārthas—ends and aims of all worldly activities—are Dharmā, Artha and Kāma, the securing of religious, pecuniary, and personal advantages.

2. मूढावसिक्त (Mūḍhāvasikta)—see the ‘evolution of castes’ as given in Yājñ. Āchārādhyāya, Verses 90-96 pages 241-257 above. The issue begotten by a Brāhmaṇa on a Kṣatriyā wife is called Mūḍhāvasikta. Yājñ. Āchāra. 91.

3. अनुसेप्त इ. ए. the issue of the union of the male of a higher class with the female of a lower class. These have been indicated in Verses 91 and 92 of the Āchārādhyāya of Yājñavalkya, pages 248-251. The contrary of this term is प्रतिलोमज (Pratilomaja) the issue of an inverse union i. e. the Union of the male of a lower order with the female from a higher order. See Verses (93-95) Do. Do (pages 252-260).

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Not going beyond the class is according to the class, yathāvarṇam. Classes, such as the Brāhmaṇas and others. Here, in cases of Brāhmaṇas, Brāhmaṇas alone of the specified description and number can be witnesses. The same (rule) should be observed in 5 the case of Kshatriyās and others. Similarly, in cases concerning women, women alone can give evidence. As says Manu<sup>1</sup>: “ Women should give evidence for women ”.

In the absence of persons of the same caste or class i. e. the Mūrdhāvasikas and Brāhmaṇas &c. will become (proper) 10 witnesses in the cases of all i. e. Mūrdhārasikas &c., Brāhmaṇas and others.

In the absence of witnesses of the aforesaid description, in order to establish the rule that others for whom there is no objection may be (accepted as) witnesses, it is necessary to mention those who 15 are not (fit to be) witnesses. These have been pointed out by Nārada<sup>2</sup> as of five sorts :—“ The incompetent witnesses, too, have in law<sup>3</sup> books been mentioned by the learned to be of five sorts ; (viz. witnesses who are incompetent) on account of a (special) text of law, on account of depravity, of contradiction, on account of a voluntary 20 deposition, or of an intervening death.”

It may be asked what witnesses again are incompetent under a special text ? So the (same) author<sup>4</sup> says: “ Learned Brāhmaṇas, hermits, aged persons as also ascetics and others, are incompetent (as) witnesses under a special text of law ; and no (special)<sup>5</sup> reason 25 is given for this (rule). ” Hermits i. e. Wānaprasthas. By the term Ādi, and others, are included those who have any dispute (at law) with the father or (such) others. As says Sāṅkha: “ Persons

1. Oh, VIII. 68.

2. Ch. I. 157.

3. ‘ शास्त्रेऽस्मै ’ is another reading &c. “ In this law ”

4. Nārada Ch. I. 158.

5. The reason why the persons referred to in this paragraph are excluded seems to lie in their entire renunciation of earthly interests, which render them unfit to appear in a court of justice. Cf. Manu VIII. 65 — Dr. Jolly.

6. One in the third stage of life, the four stages being ब्रह्मदेव, गात्रेय, वात्सल्य & संघाटा.

having a dispute (at law) with the father, resident students at the preceptor's home, ascetics, hermits. and the *Nirgranthas*<sup>1</sup> are incompetent (to be) witnesses."

Persons unfit to be witnesses *on account of depravity* have been pointed out (by him<sup>2</sup>) thus: "Thieves, robbers, dangerous characters, gamblers, and rogues<sup>3</sup>, are incompetent (as) witnesses on account of depravity; there is no truth (to be found) in them." *Dangerous characters* (*chandâb*) i. e. of excitable temper. *Gamblers* i. e. those engaging (themselves) in gambling.

The same Author<sup>4</sup> has pointed out the nature of witnesses incompetent on account of contradiction: "Should one of the witnesses entered on record or summoned by a party depose to a falsehood, all of them become incompetent (as) witnesses on account of a Contradiction".

Similarly the nature of a *Swayamukti* or a volunteer witness has been described<sup>5</sup>: "A volunteer witness is he, who without being appointed to be a witness, comes of his own accord to make a statement, (and) is termed a spy in the law-books; he does not deserve to bear testimony."

The characteristics of a witness (rendered) incompetent on account of intervening decease have been given thus<sup>6</sup>: "When a claim has to be proved, and the claimant is not in existence, for whom can (any person) bear testimony? And so such a person is an incompetent witness by reason of intervening decease." i. e. either by the plaintiff or the defendant,—who has to prove a (particular) claim (by informing his witness) thus: 'you shall be my witness for this claim'; when such a one—i. e. either the plaintiff or

1. निर्ग्रन्थ ( *Nirgrantha* )—free from all ties or hindrances—a saint or devotee who has renounced all worldly attachments, and wanders about naked and lives as a hermit. The term has also the following meanings:—an idiot, a fool, or a gambler; 'without a restraint'. This term is also used at times in reference to Jain or Buddhist monks—a fact evidencing a particular attitude towards this sect at one time.

2. Nârada Oh. I. 169.

3. वृग्नः . वृग्नः is another reading: assassins.

4. This text is assigned to Kâtyâzana by the Author of the *Mitakshara*. See Verse 359 Kâne.

5. Nârada I. 161.

6. Nârada Oh. I. 162.

the defendant is not in existence i. e. is dead, and the claim has not been proved, in what claim or for whose behalf should one bear testimony as a witness ? and thus one ceases to be a witness, on account of intervening decease.

5 Where, however, the sons have been told by their father at the time of death or even while he was in (sound) health, that in such and such a claim, such and such persons will be witnesses, in such a case one can be a competent witness even though there has been an intervening decease. As says Nārada : "A witness 10 becomes incompetent on account of intervening decease, unless he has been named by the dying man." And also, "Where a witness has been named by one while (perfectly) free from any disease in a claim which is in accordance with the law, even if the claimant die, the witness (still) continues to be (a competent) witness in claims such 15 as for the six kinds of property viz. Anṛdhita and others."

## S'īlapāṇi.

Yājñavalkya, Verse 68.

*Rjavo*, 'straightforward,' i. e. not crooked. Of this kind should the witnesses be; should be understood. Thus is the connection with what 20 will be stated hereafter.

## S'īlapāṇi.

Yājñavalkya, Verse 69.

Three is the least i. e. lowest number of whom are *tryavardh*, 'not less than three'. The meaning is that they shall be not less than 25 three. *Yathājātī*, 'according to the caste &c.'; to whichever caste one may belong, of that caste shall his witnesses be; so, of a touchable caste, a touchable. Or in the case of all, all may be witnesses, since Manu, has observed : "Witness evidence is admissible if (it is) in accordance with what has actually been seen or heard (by the witness)" This' 30 moreover, is indicative as applicable as a means (of evidence)—the meaning is one is admissible as a witness who has evidence regarding the subject matter in dispute

The Author mentions those who are incompetant<sup>1</sup> witnesses

**Yâjñavalkya, Verses 70, 71.**

A woman, a minor, an old man, a rogue, an intoxicated person, one violent, one against whom an accusation has been brought, a stage-dancer, a heretic, a forger, one deformed (70).

One degraded, a relative, one having an interest in the subject-matter (of the suit), an ally, an enemy, a thief, a desperado, one who has been found guilty, an outcast, and the like others are incompetent witnesses. 10

Mitâksharâ:—*Stri*, a woman, is well known; *bâlah*, a minor, one who has not attained (the age of) capacity; *vîddhaḥ*, an old man, one who is above eighty. The use of the term *vîddha* is indicative also of others e. g. learned Brâhmaṇas etc. for whom there is a (special) prohibition in the texts<sup>2</sup>; *kitavaḥ*, a rogue, one who gambles with the dice; *mattâḥ*, an intoxicated person, i. e. by drinking etc.; *unmattâḥ*, one violent i. e. one possessed by an evil spirit; *abhisastâḥ*, one against whom an accusation is brought, i. e. against whom a charge is pending, such as of killing a Brâhmaṇa etc.; *rangâvatârî*, a stage-dancer, i. e. a professional actor; *pâkhanḍinâḥ*, heretics, such as Nirgranthas<sup>3</sup> and others; *kûṭakpt*, a forger, i. e. one who makes false documents etc.; *vikalendriyâḥ*, one deformed e. g. without an ear etc.; *patitâḥ*, one degraded, such as a Brâhmaṇa-killer etc.; *âptâḥ*, a relative i. e. a friendly relative; *arthasambandhi*, one having an interest in the subject matter (of the suit), i. e. the subject matter of the suit which is under investigation; *sahâyah*, an ally, i. e. a partner; *ripûḥ*, an enemy, an opponent; *taskarah*, a thief, a robber; *sâhasî*, a desperado, one menacing (others) by the (sheer) force of his strength; *dîśhtadoshaḥ*, one who has been found guilty, i. e. who has been 20  
30

1. There is a mistake in the print of the text at p. 45 l. 18. for नैवात् सात्पिणी read नैवात्सात्पिणी.

2. e. g. Manu. VIII. 64-67. Nârada. I. 157-171.

3. Jain or Buddhist monk. See note on p. 849, above. See also the Mitâksharâ on Yâjñ II. 192 a regards प्रतिष्ठितः देवत्य धामाद्यमेव नेत्रानि॒ नामः नेत्रान्तः॑।

found out as having told an untruth; *nirdhūtah*, an outcaste, one abandoned by his relatives.

By the use of the term *Ādya*, 'and others', are also included others who have been mentioned in other *Smṛtis*<sup>1</sup> as incompetent witnesses on account of depravity, contradiction, volunteering a deposition, or of intervening decease. These (as also) a woman, a minor &c. are not fit to be witnesses.

\* Page 46.

### S'ūlapāni.

Yājñavalkya, Verses 70, 71.

These, i. e. women &c. although possessing the aforeslated qualifications must not be admitted. *Kīlavīh*, 'a rogue', one who starts betting. *Rangīratīra*, 'a stage dancer', i. e. one who maintains himself upon the stage. *Sīhasī*, 'a desperado', one who commits thoughtless acts; *dṛḍhaśadashah*, 'one who has been found guilty', i. e. in elsewhere; *nirdhūtah*, 'an outcaste', one who has been banished from the village. By the use of the word *ādya*, 'and others', are included, the *Śrotriyas*, ascetics, and others stated in other *Smṛtis*. (70, 71).

"Witnesses are known to be not less than three"<sup>2</sup>; the Author 20 mentions an exception to this text

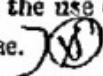
Yājñavalkya, Verse 72 (1).

 When approved of both parties, even one person becomes a (sufficient) witness, if he is conversant with his duties.

Mitāksharā:—Dharmavit, one is said to be *conversant with his duties*, who performs the ordinary and special rites after (properly) understanding them. Such a one, even if alone, is a (sufficient) witness, *ubhuyānumatah*, when approved 25 of both parties. By the force of the word *api*, even, even two (would do). Although under the text<sup>3</sup>: 'Devoted to the

1. e. g. see Nārada I. 157 See 848 p. 16-20, above.

2. Verse 69 above p. 846 l. 26. 3, Yājñavalkya II 69 p. 840 l. 27.

performance of the *S'rauta* and the *Smārt* rites', the (condition regarding the) observation of duties holds equally even in the case of more than three persons, still these are admissible as (competent) witnesses even in the absence of a consent from both sides, while a single witness or two are accepted as sufficient only with the consent of both (parties), and thus the use of the expression (*tryavara*) 'not less than three' has a purpose. 

The Author mentions an exception to the text,<sup>1</sup> "men devoted to religious austerities, men liberally disposed &c."

## Yājñavalkya, Verse 72 (2)

In the cases of adultery, theft, insult, and a *Sāhasa* (a heinous offence), any person may be a witness.

**Mitāksharā** :—*Sangrahana*, adultery, and other offences the characteristics of which will be mentioned

In cases of theft and other proceedings even persons (specially) prohibited may be accepted as witnesses. later on<sup>2</sup>. In these cases all persons, whether prohibited by special text or wanting in the special qualities of austerities, are competent. But here also, the persons who are incapacitated from being witnesses on account of depravity, of contradiction, or on account of a volunteered statement, are not acceptable as witnesses, the cause (of incapacity) viz. the absence of (truthfulness) &c. being also applicable here.

Although on account of the text: "Manslaughter, robbery, an indecent assault upon another man's wife, and the two species of insult, such are the four kinds of Heinous offences," adultery with women, robbery, and assault are regarded as heinous offences, still, these very offences become heinous when they are committed in public (by the offender) in mere brute force, while when committed in secret they are designated by the words adultery &c. and hence they have been distinctly mentioned in addition to the *Sāhasa* (or Heinous offences).

1. Yājñ. II. 69. p. 646

2. See Verse 68.

3. Of Nārada. Ch. XII. 2.

### Viramitrodaya.

‘Evidence has been laid down to consist of a writing, possession, and witnessee’ so has been stated above<sup>1</sup>. Of these, possession has been discussed. Now the Author discusses the law about witnesses by an entire Chapter

**Yājñavalkya, Verses 68, 69, 70, 71, 72, 73.**

*Tapasvinah*, ‘men devoted to religious austerities’, i. e. as a matter of habit devotee to austerities; *dānaśildh*, ‘liberally disposed’, i. e. devoted to making donations; *kulindh*, ‘of high families’, i. e. born of families free from any taint of mixture &c.; *satyavaddinah*, ‘truthful men’, i. e. having a character for truth-telling; *dharmapradhānāh*, ‘devoted to religious observances’, i. e. whose principal objective is religion; *rjārah*, ‘straightforward’, i. e. not crooked-minded. (68).

Those, (the number) of whom three is a lower degree are *tryāvaraḍh*, ‘not less than three’. *Vide* the text of Br̥haspati<sup>2</sup>: “Nine, seven, or five, should they be; as also four, or three also”, Śrauta performance, such as the maintenance of the perpetual fire &c.; a Smṛta performance, such as the performance of the *Sandhyā* worship and the like; one ever alert on their performance, and performing these every day; *yathājati*, ‘according to caste’, i. e. in accordance with the caste; thus the conclusion is that for the *Mārdhācasikta*s, the *Mārdharasikta*s; for the *Ambashīhas*, the *Ambashīhas* to be witnesses; for the women, women to be witnessess.

In the absence of those of one’s own caste or of one’s own class, in the case of all disputants, all i. e. the *Mārdhācasikta*s &c., as also Brahmaṇas &c., who have been stated to be witnesses, in the Smṛti of Manu and others, should be regarded as proper witnesses. (69).

Women &c., however, are not (proper) witnesses. *Bālāḥ*, ‘a minor’, one below the age of sixteen; *tyuddha*, ‘old’, more than eighty years of age; *kitāraḥ*, ‘a rogue’, one who habitually gambles with dice; *mattāḥ*, ‘intoxicated’, by spirituous liquor &c.; *unmattāḥ*, ‘violent’, such as by madness &c.; *abhiṣṭasto*, ‘possessed’ i. e. on account of the curse of Brahmicide &c.; *rāṅgātāraśi*, ‘a stage-dancer’, i. e. an actor; *pākhanḍi*, ‘a heretic’ i. e. one outside the orbit of the Vedic religion; *kīṭakṛtyaḥ*, ‘a forger’, one whose dealings are always fraudulent; *rīkalendriyaḥ*, ‘one deformed’, i. e. without an eye, ear &c. (70).

1. Yājñ. II. 22 p. 743 II, 16-18.

2. Ch. VII. 16.

3. अभियात्र under an accusation, or under a curse.

4. i. e. not recognising the Vedas as of authority न वेदास्य प्रामाण्यमेष्ट देवदर्शनं, सौपर्णवाचः।

*Patito*, 'degraded,' such as a Brāhmaicide &c.; *dptih*, 'a relation,' 'relative', i. e. a friendly relative; *arthasambandhi*, 'interested in the subject-matter' i. e. of the subject-matter in dispute; *sahyāḥ*, 'an ally', i. e. one who is helping the disputant; *ripuh*, 'enemy', i. e. enemy of the disputant; *taskarāḥ*, 'a thief', a robber; *sāhast*, 'a desperado', one who wilfully causes murder &c.; *drṣṭaduṣṭo*, 'one who has been found guilty,' i. e. one who has been found to have told a lie in another litigation; *nirdhātah*, 'an outcaste', i. e. who has been ostracised from the family. By the use of the word *ddya*, 'and like others', are included, the Vedic scholars, the ascetic &c. (71). 10

The Author mentions an exception to the rule<sup>1</sup> 'not less than three':—*ubhayānumataḥ*, 'with the consent of both' &c. by both i. e. by the plaintiff and the defendant, agreed to; such a one. *Dharmavīś*, 'knowing the dharmas', is the necessary attribute in common to all the witnesses. Such a one of this qualification, *chopi*, 'even one,' is a sufficient witness. 15

The Author mentions an exception to the rule<sup>1</sup> stated in 'women, minors etc.'

*Sangrahya*, 'adultery' i. e. adultery with women; theft, *pārushya*, 'insult', such as the abhuiya insult, defamation; *sākṣa*, 'in a heinous offence,' such as man-slaughter and the like; *sāraḥ*, 'all', i.e. even women and the rest devoid of the qualifications for a witness as aforesated, become admissible as witness. This is the meaning. 20

By the use of the word *cha*, 'and also', are included persons possessing other qualifications as stated by Manu and others, and as implied in the word *jñeyā*, 'should be known'. By the use of the word *tu*, 'however', the author specially marks the incompetency as witnesses of ascetics as distinguished from women and others owing to their not being possessed of the stated qualifications. By the use of the word *npi*, 'even', are included those stated in the text of Bṛhaspati: "Both these learned men in the Vedas may be accepted". Here, the witnesses added by inclusion by the word *or*, 'or', and included by the word *ddya*, 'and like others', are particularly stated as established. There by the efforts of the parties, witness mentioned in the lists and set out in treatises are the best, viz. those working for the benefit of (the members of) all the ṛṇyas, knowing all the laws, unaffected by (motives of) avarice, by habit observing the rules of purity, both external and internal. 30 35

In this connection Brhaspati<sup>1</sup> says: "A subscribing witness, one caused to be written, a secret witness, one who has been reminded, a member of the family, a messenger, a spontaneous witness, an indirect witness, a stranger who has (accidentally) witnessed the deed (1). The king, the presiding judge, so also the village—thus have the twelve kinds of witnesses been declared. I will now declare their distinctive characteristics precisely in order (2)." One by whom his own cause has been written, and by whom his own and the father's name, as also the place of residence has been written, 10 he should be known as a 'subscribing witness,' *Likhitah* (3). One who has been entered by the plaintiff in executing a contract of loan or a like other transaction together with the details of the agreement is called a witness 'caused to be written,' *Lekhitah* (4). He, who being concealed behind a partition wall is made to listen to the declarations of the debtor, and 15 exposes the falsity of the debtor by stating in detail what had happened, is known as 'a secret witness,' *Gadghah* (5). One who after being invited was made a witness in a transaction of loan, deposit, purchase, or the like, and is repeatedly reminded of it, is termed 'a witness reminded' *Smdritah* (6). One by whom in the matter of partition, gift, or sale, the 20 community is advised, who is on terms of equality with both parties, and who knows the law, such a one is called 'a family witness,' *Kuliyah* (7). One who being commissioned, hears the statements of the plaintiff and the defendant, who is approved of both, and is a respectable man, is called a 'messenger witness,' *Datalah* (8). One who, while a 25 cause is being investigated, appears of his own accord and declares that he has witnessed the transaction is called 'a spontaneous witness,' *Vaddhachchhikah* (9). A witness who when he is about to go abroad, or is lying on a death-bed, communicates to another what he had heard is called 'an indirect witness,' *Uttarasyah*<sup>2</sup>. (10). He is also called 'an 30 indirect witness' who repeats, from his own hearing or from hearsay, the previous statements of actual witnesses (11). One in whom both have placed their trust, or have communicated the business should be known as 'a secret witness,' *Gudhachchari*; as also one who is in the midst of the transaction (12). Where the statements of the plaintiff and the 35 defendant have been heard by the king himself, he himself may become a witness when there is a dispute between the two (13). If after a suit has been decided, a fresh trial should take place, the Chief Judges together with the assessors, may act as witnesses there, but not in any other case (14). Where there has been a damage or destruction of

1. Chapter VII. I-15.

2. Cf. the *De bonis* evidence of the present system of procedure.

the boundary line around, in such a case even without helig specially appointed, the village may no doubt be a witness (15)".

Without specifying the distinction of a subscribing witness and a witness caused to be written, eleven kinds of witnesses have been mentioned by Nârada.

Now those who are incompetent to give testimony: One learned in the Vedas, a hermit, an ascetic. The enraged, a hunter, a slave, one not having faith in Vaidic ritual, the oilman, the blunderer, the village priest, one eating at one man's place, the wanderer, the cognate, the egnate, one proceeding on a holy pilgrimage, one proceeding on a sea voyage, the grocer, one defective, one devoid of a regular course of daily conduct, the impotent, the dancer, one directing in a dance, the Vratya, a deserter of his wife, one who has discarded the (sacred) Fire, one sacrificing for the unsacrificeable, one living on poisons, a snake-charmer, the poisoner, the incendiary, the ploughman, the Sudra, one declared to be unfit, one who has committed a sin of a lower order, one extremely dejected, one habitually performing acts opposed to the Vedas, one who has cast off his own duty, a twice-born on whom the ceremony of retirement from the preceptor's home is not performed, the doll in intellect, the sesamum-vendor, one causing deceit, one possessed by an evil spirit, a king-hater, the astrologer, one imprecating curses on others, one with a defective limb, a libertine, one with cracked nails, one whose teeth are rotten, a leper, a treacherous friend, the rogue, the traitor, the sorcerer, the covetous, one fierce in action, one opposed to the S'renis, and Ganas, the idol-maker, one begging by making the bull perform, one inventing false religion and rules of conduct, an apostated ascetic, the royal personage, the seller of the flesh and bones of men and beasts, and of honey, milk, water, ghee and also of the Vedas; the usurer, one engaged in undertaking causing dissensions, the villain, a low servant, one engaged in a dispute with his father, and one causing mutual dissension.

There Nârada says: "The incompetent witnesses also have in the law-booke been declared by wise men to be of five sorts, viz., (1) under a text, on account of (2) depravity, (3) of contradiction, (4) of a voluntary statement, and (5) of intervening decease (157). The S'rotriya and the like, on account of a text; the thieves and the like, on account of depravity; and on account of contradiction, where in a suit there is mutual inconsistency among the witnesses. If among the witnesses summoned by the king in an investigation of a cause the statements differ, these are rendered incompetent on account of contradiction (160). A volunteering

witness is one who without being apppointed comes of his own will and speaks (161), and a witness on account of an intervening decease is one when the plaintiff is dead without his being affirmed."

The S'rotriyas and the like who owing to their intensive application to the Vedic study being likely to be forgetful about the facts of the cause in dispute, they should not be made witnesses. If not made, but if they know, they certainly become good witnesses. So it has been said " Both these S'rotriyas should be accepted."

He further elaborates the S'rotriyas, etc.: "The S'rotriyas, 10 devotees, aged persons, and those men who have become ascetics, these are declared as incompetent witnesses under the text, here no reason has been given" (158).

If a creditor while in anticipation of impending death has stated to his relatives that such and such a person knows that a debtor truly owes the amount, such a one becomes an admissible witness even with an intervening death. When the creditor is dead, and his sons being ignorant, a cause had not been put forth, for the reason, "Who may the witness be?", thus one is an incompetent witness on account of intervening death. Here in the absence of a competent witness, an 20 incompetent, or a prohibited one may be accepted. It should be remembered, however, that one who has emphatically been prohibited, must never be admitted. This is as good as said. (72).

### S'ûlapâni.

"Not less than three shall be the witnesses". To this the Author 25 states an exception

### Yâjñavalkya, Verse 72.

One conversant with the *Dharma*, and approved of both (sides), may be admitted as a proper witness though alone, by reason of the special qualifications. It is not merely by a knowledge of the *Dharma*, nor also 30 because both the parties consent, that only one (man) is admissible as a witness.

Thus: "Where a witness pure in action, knowing the *Dharma*, whose testimony has been tested, even one may be accepted as good evidence, and particularly in cases of heinous offences," so characterised 35 in the text of *Vyâsa* by reason of his being agreed to by both the parties, by reason of the varacity of his speech, although he had not given

1. See also *Smṛti-chandrikâ* p. 76. l. 18.

evidence in other cases before, and thus although prohibited (on that account), becomes admissible as a proper witness.

Nārada<sup>1</sup>: "Those who have been set out as incompetent witnesses viz., slaves, imposters and like others, shall still be witnesses when the importance<sup>2</sup> of the trial is determined". Even here these are not all admissible: "Even among them, not a minor, nor a woman, nor one alone, nor a cheat, nor a relation, nor an enemy; as they might depose falsely".

Indeed: In the text of Nārada<sup>3</sup>: "Man-slaughter, theft, an indecent assault on another man's wife, and the two species of insult, are the five kinds of heinous offences", the adultery with women is included in the statement of Sāhasas—heinous offences—why then has it been separately mentioned? The answer is, under the text of Manu<sup>4</sup>: "That act will also be called a sahasa, which has been perpetrated violently and which has the resulting consequences", with a view to obviate the doubt about the heinous character of a violent act referred to in the text, a separate mention has thus a purpose. (72).

The Author describes the affirmation of the witnesses

### Yājñavalkya, Verse 73, (1)

In the presence of the plaintiff and the defendant, the witnesses should be affirmed, (in the following form)

Mitiksharā:—In the presence of the plaintiff and the defendant, Sākṣināḥ, the witnesses, when gathered together—under the text of Gautama<sup>5</sup>: "They (i. e. the witnesses) should not speak singly or without<sup>6</sup> being asked," should be affirmed, s'rāvayet, as follows. There also a special rule has been laid down by Kātyāyana<sup>7</sup>: "The witnesses being assembled in the middle of the court room, in the presence of the plaintiff and the defendant, the judge

1. Ch. I. 188.

2. i. e. in important proceedings even these may become witnesses.

3. Nārada Ch. I, 19C.

4. Ch. XIV. 2.

5. Ch. VIII. 333. See the comment of Mṛdhatithi on this verse.

6. viz: verses 73 (2), 74, 75, further on.

7. Ch. XIII. 5.

8. There is a mistake in the print at p. 46, l. 17. for नासमदेवाः पूर्णः read

should examine them after assuring them in the manner as laid down in the following rule (342): "In the forenoon, the judge, being purified, should charge the *dwijsas*, their faces being turned towards the North or the East, to give true evidence, in the presence of (the image of) God and the Brâhmaṇas (344). After having summoned the witnesses and bound them down firmly by an oath, he (the judge) should examine them severally, (all of them) being men of established character and acquainted with the facts (of the case) in dispute (345)."

Moreover, a rule has been laid down by Manu<sup>1</sup> for affirming the Brâhmaṇas and others: "A Brâhmaṇa should be required to swear by the (merits generated by his) truth, a Kshatriya by (the means of) his conveyance and by his weapons, a Vaisya by his kine, grain, and gold, and a Sûdra by (imprecatting on his own head the guilt of) all sins". A Brâhmaṇa should be made to swear with the words—"If you tell an untruth, all (merits arising from) your truth will perish"; a Kshatriya—"Your (means of) conveyance and weapons will become futile"; a Vaisya—"your kine, grain and gold will become useless", and a Sûdra—"if you tell an untruth all the sins will accrue to you".

Here, moreover, an exception has been mentioned by the same<sup>2</sup> Sage: "The *Viprâs* who carry on the business of cowherds, traders, similarly of mechanics, actors, and also menial servants; or usurers, the judge should treat as Sûdras". The use of the term *Vipra* is by an extension, indicative, of Kshatriya and Vaisya. *Actors* (*Kusîlavâh*) i. e. singers.

When (the plea of) a defect in a witness has been raised by the defendant, the decision should be arrived at in the same manner as is done in the case of defects which are capable of being determined upon by actual sight, such as minority &c. In the case, however, of such as are not capable of being so determined, the point should be decided by reference to the evidence of witnesses and the evidence of general repute, and not by that of other witnesses; thus there is no incongruity.

If the defendant, after having set up a defect in the witnesses, is not able to substantiate it, then he \* Page 47. should be punished according to the nature of the defect set up. If, however, he establishes the defect, then those persons will not be admitted as witnesses. As has been said<sup>1</sup>: "If he (*i. e.* the defendant) do not establish clearly the defect in the witnesses, he should be compelled to pay a fine; if the defect is established, the witnesses should be rejected as persons unfit to be witnesses".

And when after all the witnesses intended to be cited by the plaintiff have been found to be defective, and the plaintiff cannot prove his case by (any) other evidence, then he becomes defeated; ride the text.<sup>2</sup>—"When defeated, he should be compelled to pay a fine as laid down by the law, if the plaintiff is disposed to be indifferent in (the matter of) establishing the truthfulness of his witnesses." The meaning is that if he is desirous (of establishing his case), he should have recourse to other evidence.

How should a witness be affirmed? on the Author explains

Yâjñavalkya, Verses 73 (2), 74, 75.

"Those regions (which are) meant for the perpetrators of sins and of baser<sup>3</sup> sins, as also those worlds (which are) meant for the incendiaries and the slayers of women and children, to all these shall he go who gives false evidence. 73 (2), 74.

"Whatever merit you have secured by (your good deeds in) hundreds of previous lives, know that all that (merit) will be his whose defeat you will bring about (by speaking) falsely. 75.

Mitâksharâ:—The meaning is that those regions which are intended for the perpetrators of sins, accessory and baser ones, as also for the incendiaries and the murderers of women and children, to

1. By Vyâsa.

2. Also of Vyâsa.

3. महाप्रतक्ष. these are.

all these shall be go who gives false evidence. Similarly, whatever merit may have been acquired through hundreds of previous births, all that goes to him who is defeated on account of your (having given) false evidence; thus a witness should be affirmed, is the connection.

This (latter), moreover, should be understood as applicable to Sādṛas, as the affirmation by all the sins as laid down in the text<sup>1</sup>—"and a Sādra by all the pātakas"—has also been made applicable to the *dūjias* who carry on the occupation of cowherds &c. 10 as has been laid down in the text<sup>2</sup> "(dwijās) engaging themselves as cowherds, grocers &c." The transference to another of the merit acquired through innumerable births, as also the accrual of the results of baser and other sins is not deducible from untruth alone. Thus this text is intended merely as a means of inspiring awe and 15 fear (in the defendant); as says Nārada:<sup>3</sup> "By ancient sacred texts, extolling the excellence of truth, and denouncing the sinfulness of falsehood, let him inspire them with deep awe".

### Viramitrodaya.

Now the Author states the manner in which witnesses should 20 be examined

#### Yajñavalkya, Verses 73, 74, 75.

Those attending for giving evidence as witnesses and in the presence of the plaintiff and the defendant, the investigating officer himself should affirm in the manner hereafter to be stated.

25 *Pāpakāḍīm*, 'for the perpetration of sins', are meant here the regions (intended) for the perpetrators of sins not specifically mentioned viz. such as the *Raurava* and the like other places. *Agnidāḍīm*, 'for the incendiaries', i. e. who set fire through hatred to fields full of crops, to a store-house, and the like places; *adhyāyam*, 'evidence' i. e. statement 30 to be made as a witness; *anyāyam*, 'false' i. e. not according to facts, *yo vade*, he 'who states', *ta etdñ sarvān*, 'he all these regions', *ardapnoti*, 'shall go to'.

By the use of the word *tathā*, 'also', the perpetrators of the lower kinds of sins, and by the several use of the word *cha*, 'and', are included

1. Manu ch. VIII, 88, 118.

2. Manu ch. VIII, 102.

3. Ch. I, 200.

the perpetration of grave offences, such as, the parricicide, or causing abortion, and the like.

By reason of the text<sup>1</sup>: "While a śādra, by (the imprecation of) all the sins", in regard to the affirmation of a śādra witness, the Author says; *sukṛtumitti*, 'merit etc'. The meaning is that whatever religious merit you may have acquired in past births, all that shall perish. Nārada<sup>2</sup>: "By the truth, should a Brāhmaṇa be affirmed; or Kshatriya by the means of his conveyance and weapons; by the kine, gress, and gold, a Vaisya, and a Śudra by all the sins".

"Speak the truth", thus no affirmation should be caused to be made by a Brāhmaṇa, in the form of wealth, viz. 'this is the truth'. This, however, is in regard to a Brāhmaṇa for whom a middle course is admissible *vide the text of Gautama*<sup>3</sup>: "Some (declare, that the witnesses) shall be charged to speak the truth. That in the presence of Gods, Brāhmaṇa, and the Royal Court, is the case of others than Brāhmaṇa". 15 "By one" is in regard to the specially qualified.

Vāhanum, 'means of conveyance', such as the horse, etc.; dyudham, 'weapon', such as the sword, etc. The affirmation should be made in the form of a touch of these. By the touch of the cow or the grain which are the main support of agriculturist, and of gold, the Vaisya 20 should be affirmed. By the text, (of Nārada), 'A Śudra &c. and S'ukrtam etc., religious merit' when the judge causes the affirmation, the party should be made to repeat this 'all the sins shall accrue to me if I make a false statement.'

By the use of the word *tu*, 'however', are excluded the affirmations of the members of *three varṇas*: 'Speak', thus, should he accuse the Brāhmaṇa, 'speak the truth', thus a Kshatriya". So also<sup>4</sup>: "Those of the Vipras who carry on the business of cowherds, traders, also the mechanics, and actors, menial servants, and usurers—the Judge should treat as Śudras". "Treat as Śudras", i.e., should cause affirmation to be made like the Śudras. In the case of Kshatriyas, the rule should be understood by discriminating between men of quality and those without any qualification.

1. of Manu Ch. VIII. 113.

2. Ch. I. 199; See also Manu Ch. VIII. 113.

3. Ch. XIII. 12, 13.

4. एकेनैति—Here Mitramiśra reads the text of Gautama (XIII. 12) as सत्येनैकेन—while in the original it is एकेनैके—according to some, by the truth.

5. viz. the Brāhmaṇa, Kshatriya and Vaisya.

6. Ch. VIII. 89.

7. Ch. VIII. 103.

Mitâksharâ :—He, who having agreed to give evidence as a witness, after having been affirmed, does not On a refusal to deposite anything, should be made to pay by the give evidence the king the entire debt (*i. e.*) together with interest, debt should be to the creditor, *sadasabandhakam*, with the paid. 5  
*addition of a tenth*, *i. e.* together with a tenth part.

The tenth part, moreover, becomes the king's property, for it has (already) been laid<sup>1</sup> down above that “a debtor should be made to (pay) by the king to himself ten per cent of the amount recovered.” 10

This (rule), however, should be understood to be enforceable after the 46th day is reached. One depositing before that limit should not be made to pay.

This rule, again, applies to those who are not affected by any of the calamities, such as a disease &c. As says Manu<sup>2</sup>: “A man who, without being ill, does not give evidence in cases of loan transactions and the like within three fortnights shall become responsible for the whole debt together with a tenth part of the whole.” *Without being ill* is indicative by implication (also) of the absence of (other) calamities caused by the king or fate. 15

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### S'filapûgi.

### Yâjñavalkya, Verse 76.

Those, moreover, who after being put to an oath viz.: “these regions for the sinners &c.”, do not give evidence, after an interval of three fortnights they should be compelled by the king to pay the amount of the debt together with interest, and a tenth part in addition. The addition of the tenth part being by way of penalty, the king should take (it to) himself. Manu<sup>3</sup> states a special rule: “He, to whom, within seven days of his having given evidence, happens (a calamity in the form of) a sickness, a fire, also of the death of a relative, shall be made to pay the debt and a fine.” 25  
30

1. Yâjñ, II. 42. p 779 N. 25-26 above.

2. Ch. VIII. 107.

3. Ch. VIII. 109.

- Also: "When a plaintiff after having agreed to attend for performing an ordeal, does not attend, in such a case the fraud should not be allowed when any calamity, either caused by God or the King occurs to him. By merely giving up the period he does not become defeated".  
 5 'Should not be allowed' i. e. should be dispelled. Here, according to some, the use of the word *Āni*, 'loss' before the word *pardjītah*, 'defeated' is in the sense of a defeat. In the said, a fraud being liable to be dispelled, there cannot be a defeat merely on account of the statements, for a fault may likely be found even in the witnesses cited.  
 10 While in the case of statements the suspicion would be of a slight degree. So hold others. (76-77).

## Śūlapāṇi.

## Yājñavalkya, Verse 77.

He, who though knowing (the facts), through wickedness does not appear and attend, he should be regarded as equal to a false witness in guilt with the sins and penalties. Kātyāyanī says in regard to false witnesses: "A false witness shall stay in the otīchi<sup>1</sup> hell for a year". (77)

How should the decision be given when the witnesses disagree?  
 So the Author says

## Yājñavalkya, Verse 78.

In (the case of) a disagreement, the testimony of the majority prevails; similarly if the witnesses are equally divided, the evidence of the virtuous; if, however, the virtuous disagree, the evidence of those who are most virtuous  
 25 should be accepted (as conclusive).

Mitakṣhara :—Dwaidhe, in the case of a disagreement, i. e. conflict between witnesses, bahūnām vachanam

Rule in the the testimony of the majority, grāhyām, should be case of a conflict accepted. When the disagreement is between 30 among witnesses, those who are equal i. e. equal in number, the testimony of those who are virtuous should be accepted. When, moreover, the disagreement happens to be even

1. अतीची—The name of a particular hell; a waveless stagnant cesspool See Yajn. III. pl. 224.

among the virtuous, those who are gunavattamāḥ, *most virtuous*, i. e. accomplished by learning and study and by the observance thereof; as also who are endowed with wealth, male issue &c. The testimony of these should be accepted.

Where, however, the virtuous are few and the others many, the testimony of the virtuous alone should be accepted *vide* the text<sup>1</sup>, "With the consent of both, even one person is (enough as) a witness, if he knows the *Dharma*," prominence having been given to the superiority of virtues. What, however, has been said about the incompetency of persons on account of a contradiction, applies to a case where no special preference can be admitted on account of the general equality of all. 10

### Viramitrodaya.

Now the procedure regarding the statements of witnesses.

There Kātyāyana<sup>2</sup> says: "The witnesses should give their evidence while within the Court premises, and not elsewhere; this is the rule in regard to all kinds of witness evidence; but it is otherwise as regards immoveable property". In the case of the killing of sentient beings, the witnesses should be examined near<sup>3</sup> the corpse; in its absence, near a mark (of the corpse); in no other manner should he be examined. With an unperturbed mind, whatever and whenever he may have seen with his own eyes, and which has been remembered (by him), that a witness should state in his deposition. So also, "Where, in the case of defendants belonging to a foreign country, their presence is unsecurable, in such a case a written statement of his deposition, made before 25 Scholars of the three Vedas should be caused to be taken."

Kātyāyana<sup>4</sup>: "What was seen by persons together, that should be stated as it was; where it was separately seen in different transactions, that should be deposed to separately. Where a transaction came to be known by the witnesses at different times, there each separately should 30

1. Yājñ. II. 72 above p. 812. II. 22-24.

2. Verse, 380.

3. श्रवस्तिष्ठौ—Mr. Kane in his compilation of extracts from Kātyāyana has preferred the reading as श्रिवस्तिष्ठौ. But श्रवस्तिष्ठौ is better, and appropriate to o.

4. Verses 394-395.

be examined at a different time; an says Bhṛgu". "Not one transaction" means different transactions. So<sup>1</sup>: "Their statements as made naturally should be accepted free from faults; when the witnesses have made their statements they must not be questioned by the king again and again."

5 What should be done when a disagreement occurs in the statements of witnesses examined? So the Author says

Yājñavalkya, Verse 78.

Of the witnesses, whether examined by one side e.g., by the plaintiff, or examined on behalf of both sides, where there is 'a disagreement', 10 *dwaideś*, i.e. where their statements contradict each other, *bṛhmaṇām*, 'of the majority' i.e., as compared with the opposite testimony of a larger number of witnesses, the statements of witnessess should be accepted. Where the witnesses are men with qualifications and of equal number on both sides, then by a comparison with the cocontradicting statements, those 15 who have higher qualifications, their statements should be accepted.

By the use of the word *tu*, 'however', is excluded the admissibility of statements which are opposed to the admissible testimony. Where, on a difference of the evidence of the contending parties, there is an absolute equality then by the rule stated in the text: "When three witnesses 20 for both sides" &c. an adjustment has been made before.

Of one's own witnesses if there be mutual contradiction, or an entire agreement, then according to the opinion of Misra, another kind of evidence should be resorted to.

Now, come under the text of Kātyāyana viz.: "Of the subscribing 25 witnesses who have been pointed out by the plaintiff, even if one deposes falsely, all become incompetent witnesses on account of an incongruity." Others say that the purport of the text of Kātyāyana is that of the three when one speaks a falsehood, another who is equal to him and deposing correctly, and the third being left alone, there a decision cannot be 30 reached through witness evidence, while the purport of the present text is that as the remaining witnesses on the other side are more than one, the decision can be reached from their evidence itself. (78).

1. Verse 393.

2. Yajñ. II. 17; see p. 696. 1. 18.

S'âlapâñi.

*Yâjñavalkya, Verse 78.*

When there is a conflict among witnesses, the testimony of the majority should be accepted. When the witnesses are equally divided, the statements of those with better qualifications should be accepted. And if it is the case with all, the statements of the best qualified should be taken as decisive. (78).  
5

What testimony of the witnesses leads to success and what to a defeat? (Anticipating this inquiry) the Author says

*Yâjñavalkya, Verse 79.*

10

He, whose witnesses depose to the truth of (the allegations in) the plaint, shall become successful; (and) sure defeat will be his whose witnesses speak to a falsehood.

Mitâksharâ:—yasya, he whose, i. e. of the plaintiff, pratijñâm, *plaint*, containing the particulars about the subject-matter, its kind, measure &c., 15 sâkshinâḥ, the *witnesses*, depose to satyâm, as true, e. g. with the words. “This is true, we know”, becomes jayi, *successful*.

Of a plaintiff, however, whose plaint, anyathâ, they contradict i. e. testify in a contradictory manner e. g. (with the words). ‘This is false’ his defeat, parâjayah, will be sure, dhruvah i. e. certain. Where, however, on account of forgetfulness or other (cause) the witnesses do not substantiate either the affirmation or the negation of the allegations in the plaint, in such a case the decision should be given by (recourse to) other (means of) proof; and the king should not question the witnesses again and again. Only such testimony should be recorded as was given (by the witnesses) spontaneously. As has been said<sup>1</sup>: “Such evidence of these (the witnesses) should be admitted as may be spontaneous and free from fault; after, however, the witnesses have made their declarations as above, they should not be questioned again and again by the king”.  
20  
25  
30

1. By Kâtyâyana verse, 392.

## Viramitrodaya.

Now the Author mentions the kind of evidence which leads to a success or a defeat

## Yājñavalkya, Verse 79.

5 *yasya*, 'whose', i.e. of the plaintiff, *pratijñām*, 'plaint',  
*sakṣīṇah*, 'the witnessess', *satyam brāyah*, 'depose to the truth', i.e. speak  
 according to the facts, sa, 'ha', i.e., the plaintiff, *jayi bhavet*, 'shall  
 become successful'. *Anyathāśadīnah*, 'speak to a falsehood', i.e., those  
 10 who depose to the falsity of the plaint, *yasya*, 'whose' witnesses, *tasya*,  
 'of him', *dhrueam*, 'sure', i.e., of a certainty, is *parajayaḥ*, 'a defeat'.  
 This is the meaning.

Some, however, say that the witnessess, i.e., of the plaintiff who do  
 not depose to the truth (of the plaint); that is improper. In a trial  
 at law, all evasions are to be removed, and by merely non-deposing,  
 15 a defeat would be impossible; that is the point.

Here, even as to a matter deposited by the witnessess, if within  
 seven days a disease or a like calamity occurs to him, the party whose  
 witnessess depose, gets a defeat—vide the text of Nārada', viz.: "He,  
 to whom, within seven days of his witnessess having given evidence,  
 20 happens (a calamity in the form of) a sickness, a fire, or the death of  
 a relative, shall he made to pay the debt, and a fine also."

In regard to the statement of witnessess Vyāsa says: "If the  
 statement (of a witness) is not defective in regard to time, form, age, the  
 thing, country and the caste, the point at issue may be declared as  
 25 established." Bṛhaspati': "Ha, the statement in whose plaint has  
 been entirely deposited by the witnessess, that man will be (declared)  
 successful; if otherwise, witnessess evidence will not lead to a conclusion."

'If otherwise', i.e., in the absence of depositing to the entirety.  
 This, however, is possible in two ways, by not depositing, as also by not  
 30 depositing as expected. Another (possibility) is also of four kinds, by  
 depositing to less, by depositing to more, by depositing to one's ignorance,  
 as also by depositing to the opponent's case. There, in all the cases, the  
 point at issue remains unestablished. On the other hand, in the case of  
 the first and the last, other means of evidence must be resorted to, and  
 35 not that by that much none there could be a decision as to its defeat.

Now the statements of witnessess: Thus Nārada': "When in  
 regard to the matters set out, a witness who has come to depose does not

depose consistently and without a flaw, that cannot be regarded as evidence." Some say that where he deposes as to the thing, that fails in regard to the portion as to the quantity, there in regard to the portion of the quantity, other evidence should be resorted to. According to the Sampradāya, other evidence may be taken even (if it be) in regard to a portion of the thing.

For, "where a party's witnesses depose to less or even more, that even may be regarded as non-evidence; this has been declared to be the rule as to witness evidence". When a hundred is in dispute, a statement as to two hundred, leading to a certainty of falsehood, is as good as not said. It is not possible in the case of a plaintiff, by reason of constant company and repetition, that his witnesses who are (thus) reminded, should forget. In the case of a statement as to fifty, in regard to more than that, it is as good as not said. In regard to the portion deposed to, however, it is certainly decisive, so opines the revered Miśra. The (author of the) Smṛtiśāra, and others, however, hold that in regard to the entire claim even, there should be other evidence.

Where 'a witness who has heard', however, when asked says "I did not hear this matter", there the point is not established, there being an absence of a concurrence between the (words of the) deposition and the matter in issue. On the other hand, like an eye-witness, where a witness deposes to the very matter at issue from what he had heard, there the claim becomes established. In the case, however, of a taint as to the unreliability of his words, he certainly does not deserve to be admitted as a witness. This is the meaning. (79). 25

### Sūlapāṇi.

#### Yājñavalkya, Verse 79.

He, the substance of whose plaint, his witnesses support and declare 'this is true', that man shall be (declared) successful. He whose witnesses speak otherwise, his defeat is certain; vide the text of Vyāsa : 30 "A false claimant is defeated". So Nārada<sup>1</sup>: "Regarding the place, time, age, subject-matter, quantity, shape and kind, where there is incongruity, that witness evidence is also worthless". (79).

The Author mentions an exception to the rule<sup>2</sup>: "sure defeat will be his whose witnesses contradict the plaint."

1. Ch. V. 175.

2. Contained in the last verse No. 79. p. 871.

## Yâjñavalkya, Verse 80.

Even after evidence has been given by witnesses in the matter under consideration, if more qualified witnesses, or double (than those first examined) depose otherwise, the 5 first witnesses become false.

Mitâkshârâ :—When evidence has been given by *witnesses*, sâkshibhîh, qualified as (stated) above, sâkshye,

Exception to the above.      in the matter under consideration, i.e., the allegations made by himself (and) which is contradictory to the allegations in the plaint, 10 yadyanye gunavattamâh, if others more qualified, than the first, dwigunâ wâ, or double in number, depose otherwise, anyathâ: i.e., in support of the allegations in the plaint, then the first witnesses, pûrvasâkshinah, become *false*, kûtâh i.e., prejurors.

15      Indeed this is improper. For, after the evidence was given by witnesses who were fixed upon as the means of An objection. proper proof after their competency was determined by the plaintiff, the defendant, and the presiding officer of the court, to seek after another mode of proof would 20 involve the fault of incongruity as also per the text of Nârada<sup>1</sup>:

"When a lawsuit has been decided, evidence becomes useless, whether it consists of documents or of witnesses, if such

\* PAGE 49. evidence was not announced at a former stage of the trial. As the (fertilizing) capacity of the rainy

25 season is thrown away on crops which have ripened, even so evidence becomes useless in suits which have been decided.

To this the answer is: when the plaintiff relying on his own internal consciousness about (the truth of) the

The answer. allegations in the plaint, and thus regarding as unreliable the testimony of witnesses who although

30 till then are undiscovered as vicious, yet as it contradicted the plaint, he conceives a defect even in (his own) witnesses, then in such a case, how can other evidence be excluded? It has also been

said<sup>1</sup>: "He whose sense of perception is faulty, as also he who has been once found to have told a lie, that man indeed is a bad witness" e. g. although a defect in an organ such as the eye &c. has not been (actually) discovered, still as such a defect in the organ is (still) inferred on the strength of the knowledge thereof by the disagreement with the plaint, so here also on the strength of the rule that the evidence of witnesses should be tested by means other than the mere examination of witnesses, Kātyāyana<sup>2</sup> has said "The truth of the words uttered by witnesses should be examined with the help of the Councillors." 10

"When evidence is free from (all) faults then (alone) their words should be tested by the principles of justice; and a plaint which has been found to be correct by comparison with testimony (so) refined, is considered as a true plaint; this is the (established) rule<sup>3</sup>." When Evidence in the form of<sup>4</sup> witnesses is (found to be) free from all faults by reference to the rule<sup>5</sup> "nor those interested in the suit, nor friends &c." then (only) their words i. e. the words of the witnesses<sup>6</sup> should be tested. And the testing of the words is to be by establishing the truth of the plaint, vide the text: "A clause is refined by (establishing its) truth." From the evidence thus refined, and from the words thus tested whichever (allegation in the) plaint<sup>7</sup> is established, that is considered as a true plaint having been found as such. This is the rule, i. e. the rule of the lawyers. The meaning is that the evidence is considered as true in the absence of any data for inferring a fault in the senses (of perception). 25

1. By Gautama (see Bālambhātti); or it may also mean, 'he whose evidence is faulty'. Vījñinevara, however, takes it to mean 'an organ of perception.'

2. Verse, 340.

3. Kātyāyana verse, 402.

4. i. e. new witnesses.

5. Narada ch. I. 177. The full text of this rule is as follows:

नार्यसंतुष्टिनो शात्रा न सहाया न वैरिः । २ दृटदेवाः प्रदद्यन् शासिणः प्रतिषुद्धिः ॥ ३७८॥

Tr: "Those must not be examined as witnesses who are interested in the suit, nor friends, nor associates, nor enemies, nor notorious offenders, nor persons tainted (with a heavy sin) ".

6. i. e. Witnesses first examined.

7. Lit. when once success in the case has been declared

After having discussed the witnesses cited as evidence by the plaintiff himself, how can other evidence be accepted as proof? There is no error here. Since by mentioning the rule: "He, who having adduced stronger proof resorts to a weaker one,

5 Another objection should not be allowed by the officers of the court and answer to resort to it again when once the case has been determined", Kātyāyana<sup>1</sup> has indicated the admission of another proof before yet the success in the case is determined, since fresh evidence is prohibited at a period subsequent

10 to the determination of success in a case. By stating the rule<sup>2</sup>: "When a lawsuit has once been decided, evidence becomes useless", Nārada also has interdicted fresh evidence only after the determination of the success in a suit and not even before. Therefore it has been established that fresh evidence may be admitted on behalf of a party

15 who is dissatisfied with his evidence even after 'evidence was given' by witnesses.

In such a state of things if there are witnesses who are more qualified than, or are twice in number to, those whose evidence was recorded, or if those cited before are not near (and available) then (the testimony of) these latter alone should be accepted as reliable evidence, the rule contained in the text<sup>3</sup>: "Whatever witnesses declare quite naturally, that must be received as evidence acceptable in trials", having a universal application in all suits. Also ride the text of Nārada<sup>4</sup>: "When a lawsuit has been decided, evidence becomes useless whether

25 it consist of a document or witnesses, unless it was announced at a former stage of the trial". If, however, those who had been indicated at the earlier stage are not likely to be available, witnesses of a like description should be accepted even though they were not mentioned before, and not an ordeal, ride the text<sup>5</sup>: "When witnesses are

30 available a wise man should avoid divine evidence." In the absence of these an ordeal may be admitted as evidence. After this the plaintiff must not be allowed to adduce fresh evidence even though he be dissatisfied, as per the text of Manu, but the trial should be concluded.

1. Verse. 221.

2. Ch. I. 62.

3. Of Manu Ch. VIII. 79.

4. Ch. I. 62.

5. Of Manu.

Where, however, the defendant, regarding the witnesses to be faulty on account of their disagreement with his own internal consciousness, is dissatisfied with the witnesses, in such a case there being no scope for a defendant to adduce evidence, the (veracity of) witnesses should be tested by the occurrence of any calamity, either on account of the King or Fate, within the interval of seven days. In such a case, moreover, if they are found to be vicious they should be made to pay the amount of the loan in dispute, and should also be punished, having regard to the amount of the claim in dispute. If, however, no fault is found, the defendant should rest satisfied with that much, as says Manu<sup>1</sup>: "He, to whom, within seven days of his witnesses having given evidence, happens (a calamity in the form of) a sickness, a fire, or the death of a relative, shall be made to pay the debt and a fine also". This, moreover, should be observed as an exception to the rule<sup>2</sup> "He whose witnesses depose to the truth of a plaint shall be successful" in reference to the defendants. 15

Some explain the text "even after witnesses have given evidence &c" as meaning that, after the witnesses cited by the plaintiff had deposed favourably to the plaintiff, if the defendant by means of more virtuous or a double number of 20

\* Page 50. witnesses establishes the opposite of what was said by the first witnesses, then the witnesses of

the plaintiff come to be considered as false. This is wrong; because it would be improper for a defendant (to be called upon) to adduce evidence. Because, a plaintiff is he who affirms a point (which is) to be proved; (and) his opponent, who affirms the *negation* thereof is the defendant. Here, therefore, the (necessity of the) proof of the *negation* having a dependence relative upon the proof of the *affirmation*, while (the proof of) an *affirmation* being independent of that of a *negation*, it is proper that the *affirmation* should be 25 (considered as) the *Siddhya*<sup>3</sup>; by its very nature a *negation* is 30

1. Manu Ch. VIII. 109.

2. Of Yājñavalkya II, 79, p. 871.

3. Lit. that which is to be established;—a point to be proved. The meaning is that the burden of proof lies upon him who asserts that a certain thing exists. This is in a line with the first elementary principle of the Burden of proof: cf. Section 101-104 of the Indian Evidence Act.

impossible to be ascertained by witnesses and other (means of proof), and hence it is proper that the burden should lie upon the plaintiff alone.

Moreover, it is a universal rule that the burden of proof is regulated in accordance with (the nature of) the answer: "When *res judicata* and 'special exception' are set up as a combined plea, the defendant should exhibit proof; in (the case of) the plea of denial, the plaintiff (should exhibit it). In the case of an admission, however, it does not become necessary (at all)." Never, however, will the burden lie on both in the same trial, *vide* the text: "In one suit the burden of proof cannot lie on two litigants". Therefore the suggestion<sup>2</sup> that defendant's witnesses should (be allowed to) testify when they are more qualified or double, (in number) is improper.

It may be said again<sup>3</sup> (granting all this) where two persons both coming as plaintiffs, each saying 'I got this as inheritance from a (deceased) relative' 'I got this as inheritance from a (deceased) relative', without having ascertained the priority (of their claim) as to the point of time, in such a case when there are witnesses on both sides, a question might arise as to whose witnessess should be accepted, having regard to the text<sup>4</sup>: "When two persons quarrel for a point, and both have witnesses, the witnesses of him who sets up a prior claim should be heard", the rule deducible would be that the witnesses should be examined for him who first appears<sup>5</sup> as a complainant? And the procedure (contained in the text) "Even after witnesses have given evidence &c." is intended as an exception to it. And therefore when (in such

1. Of Kātyāyana verse, 190.

2. *cis. as to the meaning of this text of Yājñavalkya.*

3. It may be noticed that this objection is raised after the refutation of the last objection, by reference to the text न चक्रेत्यनिवापे &c. The objector says—admitting this to be correct, what if both the litigants are placed in the position of a plaintiff? In such a case, he maintains that this text should apply; but this too has been refuted in the end by Vījñāneśvara.

4. Cf Nārada I. 163.

5. Mark the gloss of पूर्णमस्तु 'प्रतिष्ठानामेतु निरोद्धानं विनाशनं तत्र निर्गमः इति'

a case) the witnesses of both the prior and the second complainant are equal in merit and number, the witnesses of the first complainant alone should be examined; where, however, the witnesses for the later complainant are more meritorious or are double in number, then the witnesses for the defendant should be examined. And thus there would be no necessity for making a *negation* a *sādhyā*, as both parties here set up an affirmative case, and as also the answer is of a kind different from the four varieties<sup>1</sup> of an answer, and thus there is no (necessity for the) adjustment<sup>2</sup> of the burden of proof. And as even according to the *Siddhāntīn* the same plaintiff may be put to a double proof in the same trial, so there would be no contradiction in the plaintiff and the defendant being put to two proofs<sup>3</sup> (respectively).

(To this the answer is):—Even this the great teacher<sup>4</sup> does not admit. Such an import is not obtainable either from the express or implied meaning of the term *even* (*api*) in the text : “*Even* after the witnesses have given evidence.” So enough of prolixity.

#### Viramitrodaya

Of the witnessess who have arrived simultaneously, on a contradiction among them, the rule as to the greater or less potentiality of these has been stated. Now the Author states the rule when they appear separately 20

#### Yājñavalkya, Verse 80.

*Sākṣhibhīk sākṣhyā uktēpi*, ‘even when evidence has been given by witnessess’, and as compared with these witnesses, better qualified as mentioned before, *anye*, ‘others’, of equal number, or also double the number, i. e., witnesses, if *anyatdh*, ‘otherwise’ i. e., contradictory to the witnesses examined before, *brāyuh*, ‘should depose’, then, *pūrashākhyinah*, ‘the first witnessess’, *Kālāh*, ‘false’ i. e., false deponents, *ayuh*, ‘become’. By the use of the word *wā*, ‘or’, in the case of casual witnessess, 30 preponderance in number has been properly adjusted.

1. See p. 661, lines. 17–19.

2. Cf. विवरणम् See note 4 on p. 708 above.

3. Here ends the objection.

4. अत्याधि i. e. अप्रकृत्याधि.

This, however, before the decision is reached. "When having abandoned strong evidence, one resorts to weak one, he should not again be allowed to resort to that evidence when the members of the Court have come to a decision as to the excess (in the proceeding)", 5 this text of Kâtyâyana<sup>1</sup> having an application after the (result as to the) success. The weakness of the evidence being expressed by the word *tyakta*, 'having abandoned', as indicative of a deliberate abandonment, points to the weakness also of the evidence indicated before, and so is the prohibition. (80).

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## S'ûlapâni.

Yâjñavalkya, Verse 80.

After the witnesses have given evidence, if those superior in number or with higher qualifications depose to the contrary, then the first witnesses are (to be regarded as) false witnesses. (80).

15 False witnesses have been indicated. The Author (now) mentions the penalty for these.

Yâjñavalkya, Verse 81.

The suborner as well as the (false) witnesses should be separately punished with a fine double the amount in 20 dispute. A Brâhmaṇa, it has been laid down, should be banished.

Mitâksharâ :—He who by pecuniary bribes &c. prepares false witnesses is (called) a suborner, *kûṭakṛt*,

Punishment for Those, *sâkshiṇâḥ* cha, witnesses also, who are 30 false witnesses. Thus false, should each separately be punished with a *dândam dwigunaṁ*, fine double the amount,

*vivâdât, in dispute*, i.e. that which has been prescribed for (the party suffering) a defeat in the case of a defeat in the suit.

A Brâhmaṇa, however, should be *vivâsyâḥ*, banished, i.e. expelled 35 from the kingdom, (and) not fined.

This rule, moreover, is to be observed in cases where special motives such as covetousness &c., do not appear, as also when the witnesses are not habituated (to perjury). When, however, a special

1. Verse, 221.

motive such as covetousness or the like is apparent, or the party is habituated, the rule has been laid down by Manu<sup>1</sup>: "He who commits perjury through covetousness shall be fined one thousand (panas); (he who does it) through confusion<sup>2</sup> (should he punished) in the (punishment laid down for the) lowest Sāhasa; (if he does it) through fear &c. the punishment should be (the same as for) the two middle (Sāhasas,) and (if he does it) through (feelings of) friendship, four times the amount of the lowest Sāhasa. (121). He who does it, through lust shall pay ten times the amount for the lowest Sāhasa (hut), he who does it through wrath, three times the last (of the Sāhasas); (he who does it) through ignorance, full two hundred; but (he who does it) through childishness one hundred (panas). (122)." Here, *covetousness* (Lohah) means greed for money: *Confusion* (Mohah)—a distorted impression. *Fear* (Bhayam)—acute fear. *Friendship* (Maitri)—excess of attachment. *Lust* (Kāmāh)—desire for an intercourse<sup>3</sup> with a woman. *Wrath* (Krodhah)—non-toleration. *Ignorance* (Ajñāna)<sup>4</sup>—indistinct knowledge. *Childishness* (Bālis'yam) i.e. non-commencement of knowledge. By thousand &c. are intended (to be indicated) the copper *panas*.

Similarly<sup>5</sup>: "A just king should, however, fine and banish 20  
(men of) the three (lower) orders<sup>6</sup> who give

\* Page 51. false evidence; a Brāhmaṇa he should (only) 25  
banish". This, moreover, is applicable to (a case of) habitual (offence), as the present tense has been used in the term: "Kurvāṇān (कुर्वाणान्), Three classes (trin varṇān) i.e. those commencing with the Kshatriya order, should be fined as before, and *banished* (pravīśayet) i.e. should be killed; as the word, *pravīśa* is used in the sense 'to kill' in the *Artha-s'āstra*, and as this text is in the nature of an *Artha-s'āstra* text. There also the (particular kind of) *pravīśana* viz., cutting off of the lip or the tongue, or deprivation of the life should be observed by regard to the subject-matter of the (particular) perjury (in question). A Brāhmaṇa, however, should be fined and *banished* i. e. expelled from the kingdom. One from 30

1. Ch. VIII. 121-122.

2. षोड.

3. शीघ्रकामिता, is a better reading.

4. Manu Ch. VIII. 124.

5. Varṇān वर्णान्.

whom clothes have gone is a *vivāsāh*. Having prepared the *causal* form indicative of 'one who causes (a man) to be without clothes,' the present form is obtained by dropping<sup>1</sup> the *i*—by analogy to the role (in the Vārtika): "When there is a suffix at the end of words ending in त् the change that takes place is the same as that which takes place when the suffix त् is at the end" 'Should make naked' is the meaning. Or, that in which one lives is a *vāsa* (वासः) i. e. a house. *Virdsayet* therefore would mean—should demolish his house.

Even in the case of a Brāhmaṇa, when no special motive such as covetousness &c. is known, nor a habit, only the fine specified in each place respectively (is to be imposed). In the case of a habit, however, there is a pecuniary punishment, as well as banishment. There, also, the rule as regards the several punishments of *vivāsana*, a stripping off of all raiments, demolishing the house, and banishment from the kingdom, should be observed having regard to the surrounding circumstances such as the caste (of the party), the amount, &c. If when no special motive such as covetousness &c. is known, as also when no habit is found, in the case of perjury regarding a small claim, even for a Brāhmaṇa there will be a pecuniary punishment as is the case with a Kshatriya. When, however, the claim is a large one, banishment from the kingdom is (the punishment). Here in the case of a habit, the rule of Manu should be observed even in the case of all.

1. i. e. अस् in विशासूर् इ “असोऽन्यतदि इ” (स्मा० छ० १३५४) . “The final portion of a word, beginning with the last among the vowels in the word, is called इ”. It is that portion of a word which is included between the last letter and the nearest vowel. e. g. in अस्मिति॒ the portion त् is इ; as also here in विशासूर्, the portion अस् is इ.

इट or इट्ट—“अतिशायने नमिषिठ्णो” (स्मा० च० १३५५)—“When the sense is that of surpassing, the suffixes तप्त् and इट्ट् are used. निष्—the Causal.

Here the formation of the word विशासयेत् is explained as follows : विशासयेत् i. e. should deprive him of his clothes विशासं कोटीति would be विशाससयति; but the अस् in विशासूर् is dropped by analogy to the rule in the case of the तप्तिः॒ इट् contained in the पाठिक “तप्तिप्रतिकादात्मेण॑ एषुलभिष्टप्य.” e. g. in the case of लप्य we get लप्येण॑ by dropping the तप्ति॒ so here also by dropping the इट् i. e. अस् in विशाससयति we get विशासयति.

It should not, moreover, be supposed that there is no pecuniary punishment for a Brāhmaṇa. For if there were no pecuniary punishment, corporal punishment being prohibited, it would happen that even in petty offences either the punishment of stripping off of clothes, demolishing the house, branding, or banishment would follow, or that there would be no punishment at all. And this would be opposed to the text<sup>1</sup>, "In the case even of persons belonging to all the four orders, for those who do not perform an expiation, legal punishment either corporal or affecting property should be ordered". Also *vide* the text<sup>2</sup>: "A Brāhmaṇa who carnally knows a guarded Brāhmaṇī against her will should be fined a thousand (panas)". As to the text of S'ankha : "Of the three (higher) orders, (the punishments of) deprivation of property, corporeal chastisement, imprisonment, ordeal, banishment and branding, are ordained for a Brāhmaṇa". Here on account of the contiguity of corporal chastisement the (punishments of the) deprivation of wealth or of the entire property are intended. For, the (punishments of) corporal punishment and deprivation of entire property have been mentioned together in the text<sup>3</sup>: "As for the Corporal punishment, it begins with (simple) obstruction and extends as far as the deprivation of life; while the pecuniary punishment begins with a Kākini<sup>4</sup> and extends similarly to the loss of the entire estate". As to what has been said<sup>5</sup> "He should be expelled out of the kingdom leaving all his property (to him) and himself untouched," it has a reference to the first act of the nature of Sāhass, and not to all (kinds of) offences.

A corporal punishment, however, does not ever occur for a Brāhmaṇa as Manu<sup>6</sup> has stated generally viz: "Let him (i. e. the king) never slay a Brāhmaṇa, though he is immersed himself in all (kinds of) sins". Moreover Manu<sup>6</sup> says: "No greater crime is

1. of Kātyāyana, verse. 484.

2. Of Manu Ch. VIII. 378.

3. Nārada Appendix 54. And also of Kātyāyana verse. 484.

4. The smallest coin. e. g. a Cowrie. It is also described as a money measure, 20 cowries or  $\frac{1}{4}$  of a Pana as also that of a Mūḍha.

5. By Manu Ch. VIII. 380.

6. Ch. VIII. 381.

possible on earth than slaying a Brāhmaṇa ; a king therefore must not even concieve in his mind the idea of killing him (a Brāhmaṇa)".

### S'ūlapāṇi.

The Author states a penalty for a false witness

#### Yājñavalkya, Verse 81.

*Kāṭakṛt*, 'The suborner', i. e. one who causes false evidence to be adduced, such as the Kshatriya and others, each should be punished with double the amount of that in dispute, as a fine. A Brāhmaṇa, however, with undiminished property, is to be exiled from the country. To 10 that effect says Manu<sup>1</sup> : "Never, on any account, should one slay a Brāhmaṇa, although (he is) immerced in all (kinds of) sins ; (the king) should expel him out of the country, with the entire property undiminished<sup>2</sup>. A just king should banish from the kingdom after punishment, the member of the three *Vargas* uttering false evidence ; a 15 Brāhmaṇa however should be banished", and various similar penalties varying according to the offences and the Varnas, have been stated by Manu, but are not stated here for fear of prolixity.

#### Yājñavalkya, Verse 82.

He who having been called upon and sworn to 20 give evidence conceals it from others under the influence of passion, should be made to pay an eight-fold fine ; a Brāhmaṇa, however, should be banished.

Mitikṣharā :—Moreover, he who, having accepted to give evidence as of a witness, and sākṣyam s'rāvitah, having 25 been sworn to give evidence along with other witnesses, at the time of his deposition, tamovṛto, being under the influence of passion i. e. with his mind seized with the feeling of anger &c., niḥnute, conceals, sākṣyam his evidence, annyebhyah, from others i.e. witnesses with the words: "I shall not be a witness here &c."

Penalty for not giving evidence when knowing (the facts). 30 that man dāpyah, should be made to pay a fine ashtaguṇam, eight-fold of the amount of the fine (payable) in case of a defeat in the suit. A Brāhmaṇa, however, who is unable to pay an eight-fold amount as fine should be banished. 35 The penalty of banishment, however, should be

observed to be either the stripping off of clothes, the demolition of the house, or the expulsion from the kingdom according to the nature of the subject-matter of the suit. In the case of others, however, when an eight-fold amount as fine is not possible, the penalties of doing such labour as is appropriate to the caste, fettering in chains, or incarceration in jail, and like others should be observed. And this, again, should be followed (to be the rule) even in the last verse.

When all withhold evidence, then the liability of all is equal. When, however, having given evidence, they speak falsely, then they should be punished, regard being had to the exigencies (of each case). As says *Kātyāyanā*<sup>1</sup>: "Having once given evidence, those who depose to the contrary are liable to be punished, (as) they are guilty of prevarication".

Nor, moreover, ought the witnesses cited by one he approached in secret by another. As says *Nārada*<sup>2</sup>: "One

\* Page 52. should not approach in secret a witness cited by the other (side), nor should he (try to) win him over through other (means). A party resorting to such practices is (liable) to lose."

### Viramitrodaya.

The Author mentions the penalty for false witnesses

*Yājñavalkya, Verses 81 & 82.*

*Kūlakṛtah*, 'The enborner', fraudulently carrying on transactions, in short, who make false statements; those witnesses who are of such character, these *prthak prthak*, 'separately' i. e., each one, *tirddit dwigunam*, 'twice the amount of that in dispute', should be compelled to pay as *danda*, 'penalty' i. e., should be punished. In some places the reading is ~~प्रतिवेद्य~~ *Kūlāsakṣayakṛta* 'who have been induced to give evidence fraudulently'.

This, moreover, by reason of the many causes such as covetousness and the like as indicated by the word *tathā*, 'also', to one who has been unnecessarily defeated, an amount of money equal to that in dispute should be caused to be paid as a penalty. This is the substance.

A Brāhmaṇa, however, should be driven out of his country, *Smytih*, so it has been declared in the *smytis*, and is not to be punished by a money fine.

- Yah, 'be', however, *sakshyam*, *anyebhyah śrāvītah*, *śrāvītīdrān*,
- 5 'having been called upon and sworn to give evidence by other' and 'after agreeing', i.e., having declared 'I know this fact', afterwards *tamocṛtaḥ*, 'under a feeling of anger', i.e., with his mind oppressed with a feeling of anger, fraudulently, &c., *sakshyam nihnute*, 'conceals his evidence', i.e., at the time of making the statement makes trouble, that man should
- 10 be compelled to pay a penalty of eight times the amount in dispute. For this kind of offence also, a Brāhmaṇa should be banished only; by the use of the word *tu*, 'however' has been excluded a pecuniary penalty.

- Vishnu<sup>1</sup> says: "For false witnesses, the confiscation of the entire property". This moreover has a reference to those who are so by habit.
- 15 Manu<sup>2</sup>: "(If) from covetousness, he should be fined one thousand (panas); (if) through confession, however, the first amercement; (if) through fear, the two middling (amercements) should be the penalty; (if) through friendship, four times the first (121). (If) through lust, ten times the first, while (if) through anger, three times the last; (if)
- 20 from ignorance, full two hundred (panas), and (if) through childlessness, one hundred (122). The wise have mentioned these as the punishments for false evidence (81-8.).

### S'ūśpī.

#### Yājñavalkya, Verse 82.

- 25 In the matter of evidence sworn and concealed from others, for him is a penalty of eight times the amount in dispute. The rest is clear.

Not giving evidence, as also giving false evidence has been generally prohibited of the witnesses. The Author mentions cases by way of exception to it

#### Yājñavalkya, Verse 83 (1).

Where men of the (four) orders are (likely) to suffer capital punishment, there a witness may speak an untruth.

**Mitāksharā** :—Where, if a fact is deposed to, there is the likelihood of a capital punishment (being given)

The Author indicates a case where untrue testimony is permissible. To men of the four orders, varṇinām i. e. of the Sūdra, Vais'ya, Kṣatriya and Vipra classes, sākshi anṛtam vadet, a witness may speak an untruth, i. e. should not speak the truth. And by this prohibition against true evidence a

permission for refusing to give evidence, or for giving false evidence is given for witnesses of whom it has been prohibited before<sup>1</sup>.

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Where e. g. in the case of a complaint founded on suspicion, by speaking the truth a varṇi is likely to suffer capital punishment, and by speaking an untruth no one is to suffer capital punishment, there an untrue testimony is permitted. Where, however, by speaking the truth either the plaintiff or the defendant is likely to suffer capital punishment, and also by depositing falsely one of the two is likely to suffer capital punishment, there a refusal to give evidence is allowed, provided the king permits. If, however, the king does not let off in any case unless testimony is given, then an incapacity for a witness on account of depravity should be incurred. If that too is impossible then the truth alone should be spoken. For by giving false evidence the taint of a capital punishment for a varṇi, as well as that of giving false evidence is incurred. By speaking the truth, however, there would only be the taint of a capital punishment for a varṇi. In such a case, moreover, an expiation should be made according to the Sāstra.

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(It may be said) then there would be no sin in giving false evidence or in maintaining silence, as the same has been permitted by Sāstra, so the Author says

Yājñavalkya, Verse 83 (2).

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For purification from that (sin), the special oblation of rice known as the Saraswata should be presented by the twiceborn.

1. Yājñ I. 82 p. 884.

Mitâksharâ :—Tatpâvanâya, for purification from that (sin), i.e. for the atonement of the sin on account of the false evidence, or a refusal to give evidence, Sâraswata charu, the rice oblation, nirvâpyah, should be presented, by dwijâs, the twice-born, each 5 separately. A sacrifice wherein the presiding deity is the goddess Saraswati is (called) a Sâraswata: The word *charu* is well known as indicative of boiled rice which is hot and from which water has not been allowed to flow out (while it was boiling).

Here this is the meaning: False evidence or a refusal to give 10 evidence which has been prohibited for witnesses before has here been sanctioned. This expiation is in reference to the transgression of the rules generally prohibiting the giving of false evidence or not giving any, and as is to be found in the texts: "One should not tell an untruth"; "a man incurs a sin by not giving evidence, as also by 15 giving a distorted one".

It may be objected that this text which is in the nature of a sanction is meaningless inasmuch as even with this text allowing witnesses to tell an untruth or not to speak at all, the text propounding the sin incurred by reason of the infringement of the general rule 20 prohibiting witnesses from either speaking an untruth or not speaking at all, remains where it was. But it is not so. For the sin accruing from the infringement of the rule prohibiting witnesses from telling an untruth or not speaking at all is great, while that due to the infringement of the general rule is small, and thus the text in the 25 nature of a permission has a meaning.

Although in other cases the removal of (the taint of) a greater sin would also secure the removal of the smaller sin which is (only) a part (of the greater one), still here by reason of the (special) sanctioning text, as also by reason of the rule as to expiation, it 30 appears that by the removal of the greater (sin) the smaller one is not removed although it is a part of it.

"This text should also be understood as a permission for speaking an untruth, or not speaking at all, in the cases such as those of travellers and others where there is the danger of a capital

punishment being passed upon a *warni*. And as there is no other (special) prohibition, there would be no (necessity for an) expiation. In case the real facts are disclosed in course of time by other causes, the absence of a punishment for witnesses and others also is inferable from this very text.

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Here ends the Chapter on Witnesses.

### Viramitrodaya.

Thinking of an exception to the penalty etc. for false evidence, the Author proceeds

Yājñavalkya, Verse 83.

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*Yatra*, 'where', *evyāvindm*, 'of the *evyāvis*' i.e., of the Brāhmaṇas, Kṣattriya, and the Vaiśya, *radhah*, 'capitel punishment', i.e., loss of life, results upon stinting the truth, *tatra*, 'there', *adikshi*, 'a witness', *anṛtam*, 'an untruth' i.e., such as may be of use in preventing the loss of life, *vedet*, 'may speak'.

15

*Tntpdandyn*, 'for purification from that' i.e., for the wiping off of the (sin of) false statement by means of a penance, *Sastrataḥ*, i.e., intended for the goddess Saraswati, as stated before, *nirtpdyah*, 'should be offered', thus by means of a part, the (whole) sacrifice has been indicated.

It should not be contended that here the making of a false statement having been permitted, performance of a penance is incongruous; for although this is an exception to the rule stated before regarding the sin generated by the false statement of a witness, still to the general rule about the sin resulting from a false statement, no exception having been stated, the performance of a penance becomes possible.

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Some say, that here is a case of a resort to an unavoidable course, by reason of this sin being smaller as compared with the sin consequent upon the execution of a member of the *Vargas*.

In fact, in this case no sin is generated; by the expression 'for purification from that' it is meant to indicate that there is an absolute

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1. Here Mitramīśra gives his own view which in short is that just as killing an animal in a sacrifice is no sin, as it is done under an injunctive text, so here also there is no sin at all. The analogy, however, does not hold here, the expression निर्पात्रे 'for the purification of that' in terms assumes that there is something which requires purification.

nishnâtah, has been agreed to by a contract, i. e. settled; in reference to such an amount, if in course of

Regarding documents in the hand of another person. time a dispute arose, for the determination of real facts, lekhya in sâkshimat, a writing with (the attestation of) witnesses (thereon) i. e. with the attestation of witnesses of the qualities as described above, dhanikapûrvakam, (commencing)

(with the name of the creditor—that wherein the creditor is mentioned) first is a dhânkapurvakam—that is to say, where the name 10 of the creditor is mentioned first-kâryam, should be made, i. e. should be executed. Or persons, possessing the qualifications mentioned above should be made witnesses. Vide the text: "In disputes regarding whatever act has been done by a party, either witnesses, or a document in his own hand is ordained for establishing 15 the transaction."

## S'ûlapâni.

Yâjñavalkya, Verse 84.

Yâh Kâschit, 'whatever', in the form of a loan transaction, arthah, has been fixed by mutual consent, 'by such an interval so much is to be 20 paid' and the like, in such a transaction, a document with witnesses i. e. a document bearing witnesses, should be made and that too by first putting the name of the creditor before the name of debtor is written. (84).

## Yâjñavalkya, Verse 85.

And containing, among other things, the year, the month, the half of it, the day (of the month), the names, the castes, and the names of their own gotra, as also the scholastic title, and the names of self, father, and such other details.

Mitâksharâ :—Moreover, samâ, the year i. e. the cyclical year; mâsah, month, e.g. Chaitra &c; tadardha in, the half of it, i.e. the fortnight i. e. the bright or dark (half); ahah, the day, i. e. the date such as the pralipad &c; nâma, names, i. e. of the creditor and the debtor; jâtih, caste, i.e. Brâhmaṇa &c; swagotram, the names of their own Gotra. e.g. Vâsishtha &c. containing these i. e. the year &c.

1. Of Nârada.

&c. Similarly, *sabrahmachârikam*, the scholastic title, e.g. he is the master<sup>1</sup> of many branches of learning i.e. his academical title, such as 'Kâtha the master of many branches,' âtmîyapitrñâma, the name of self and father; i.e. the name of the fathers of this creditor and the debtor. By the (use of) the term *âdi*, such other, are included the amount, the caste, the quantity of the amount, the day of the week &c. A writing, containing these<sup>2</sup> should be executed; this is the connection (of this verse) with the last (verse).

## S'âlapâñi.

Yājñavalkya, Verse 85.

10

*Gotra* itself is *sagotra*; *sabrahmachârikam*, 'the scholastic title' such as, a student of such and such *Šikhâ*, that writing should have noted on it, the year &c. By the use of the word *âdi*, 'and the like', also of the thing, quantity, kind, and the like. (85).

Yājñavalkya, Verse 86.

15

After the contract has been executed completely the debtor should enter his name with his own hand (at the end) with the words: "what is written above has the assent of me the son of such (and such) a one."

Mitâksharâ:—Moreover, the contract which was agreed to between the creditor and the debtor by mutual consent of the debtor, *samâpte*, after it had been completely executed, i.e. written down, *rñi*, the debtor, i.e. the person who incurs (the liability of) the loan, *nives'ayet*, should enter, i.e. write in the document his own name *swahastena*, with his own hand, i.e. with the words: "Whatever

1. The original in ग्रन्थः—Doctor of learning.

2. Referring to this rule in a case of a will made by a Hindu, which was not written by the testator, nor in which was his signature attested, Sir M. Westropp C. J. observed: "We do not think that we are bound to apply this rule strictly, at all events to documents such as wills, which were not recognized by Hindu Law, and were therefore, not within the contemplation of the author." Radhabai r. Ganesh I. L. R. 3 Bom. 7 at p. 8.

has been written above in this document, matam, has the assent of me, i. e. is what was intended by me, mama, the son of such and such”

## S'ūlapāṇi.

## Yājñavalkya, Verse 86.

5 The meaning (of this verse) is plain. In the case of one ignorant of writing, Vyāsa states a special rule: “A debtor who is ignorant, should cause his assent to be written; or even a witness (who is ignorant) by a witness, or by any other in the presence of all witnesses.” (86).

10

## Yājñavalkya, Verse 87.

The witnesses also, should subscribe in their own hand with their fathers’ names before theirs, thus: “Here, so and so, am a witness;” these (witnesses) should be equal.

15

Mitakṣhara :—Similarly, those persons who have been indicated as sākshināḥ, witnesses, in that document,

\* Page 54 these also should each separately, swahastēna, in their own hand, subscribe their names preceded by those of their fathers with the words: “I so and so, Devadatta, am a witness to this transaction.” These, moreover, should be (so) selected (as to be) samāḥ, equal, in number and quality also.

If a debtor or a witness is not literate, then the debtor through another person, and the witness also through another witness, should in the presence of all the witnesses, cause his declaration to be written down. As says Nārada: “A debtor who is illiterate should cause his declaration to be put in writing in the presence of all the witnesses, so also should a witness (who is illiterate have it written) by another witness”.

## S'ūlapāṇi.

## Yājñavalkya, Verse 87.

30 Samdh, ‘equal’ i. e. equal in qualifications. Those who, however, are ignorant of writing should have it written—thus it has been stated before. (87).

## Yājñavalkya, Verse 88.

"Being desired by both the parties this was written by me so and so, the son of so and so.", thus at the end (of the document) should the writer then subscribe.

Mitākṣharā—Moreover, then lekhako, the writer,

ubhābhyaṁ prārhitena, being requested by

Writer's both, i.e. the creditor and the debtor—"By me such endorsement. and such Devdatta, the son of Vishnumitra this document likhitam, has been written", iti ante

likhet, thus at the end he should subscribe.

5

10

Now the Author mentions about a document made in one's own hand

## Yājñavalkya, Verse 89.

Although it be without witnesses, a writing which is in one's own hand, all that is declared to be evidence, except when it is caused by force or fraud.

Mitākṣharā—Yallekkhyam, that writing, which has been written by the debtor in his own hand, such a writing, tat sākshi-bhirvināpi, although it be without witnesses, has been laid down by Manu and others to be evidence, balopadhiṣṭādṛte, except when it is caused by force or fraud, i.e. with the exception of that which has been caused by force i.e. compulsion, or by fraud i.e. in the form of (creating) deception, temptation, anger, fear, intoxication &c. Nārada<sup>1</sup> also says: "That document has been laid down as invalid<sup>2</sup> which has been executed by a person intoxicated, by one against whom a charge had been pending, by a woman, or by a child, and that which had been executed under compulsion; also that which has been caused by fear or fraud".

Such a document, moreover, whether it be written in one's own hand or in that of another, whether it be passed in the course of a transaction with or without security, should thus far be written conformably to the usage of the country, and should be without

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25

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1. Ch. I. 137.

2. अद्यत्वा—unreliable as evidence.

prejudice to the rules as to the sequence of sense and the order of words, and should be without dropping any letter or alphabet. It need not, however, be necessarily (conched) in nice language ; it may be written even in the peculiar native language of the particular locality.

5 As says Nārada :— “That document is said to be valid which is not opposed to the custom of the country, the contents of which answer to the rules regarding pledges, and which is not in disregard of the rules about the sequence of ideas and words.”

That which explains in detail in a (rule) *vidhiḥ*. The rule 10 (*vidhi*) regarding a pledge (*ādhi*) i. e. for executing a pledge. Its characteristic i. e. ‘a pledge for custody’, a ‘usufructuary pledge’, a ‘pledge with a time limit’ &c. That wherein its characteristics are distinct is *vyaktādhibidhilakṣhanam* ‘the contents of which answer to the rules regarding pledges &c.; *Aviplutakramākṣharam*, ‘which is 15 not in disregard of the rules about the sequence of ideas and words’. Sequence i. e. of ideas (*krama*). *Krama* and *akṣharas* make up the compound word *kramākṣhara*. That wherein the sequence of ideas and words has not been disregarded is *aviplutakramākṣhara*. Such a document of this description, is legal evidence. There is no rule 20 as regards nicety of language here, as in the case of a royal grant. This is the meaning.

### Viramitrodaya.

Now the Author expounds the document as a means of proof

Yājñavalkya, Verses 84, 85, 86, 87, 88, 89.

25 A document is of two kinds, (one) made in one's own handwriting, and (the other) made in another's hand. Of these, the last should be made with witnesses etc. The first, (even) without witnesses is good evidence if not made under compulsion or through fraud. This is the difference. But a possibility exists of a suspicion arising about a 30 document written in one's own hand, and with a view to dispel it, that also should be made with witnesses on. Other kinds are of the ordinary particulars.

Yah *kaschit*, ‘whatever’, *arthāt*, ‘transaction’, in the form of a loan or the like, *parasparam*, ‘mutually’, by the debtor and the

creditor, i.e. between both, by the consent of each, *nishnditah*, 'agreed to', i.e. was established, in such a transaction, *lekhya*m, 'a document', with the name of the creditor first written, in the form of recitals couched in expressive language (84). Together with *samā*, 'the year', *māsa*, 'the month', *tadardham*, 'its half', i.e. the fortnight'; *akāh*, 5 'the day', i.e. the date as well as the day of the week. Together with this, the names of the debtors and the like others who have been the recipients of the loan by its acceptance, also of both the debtor and the creditor, *jāti*h, 'caste' such as, a Brahmana and the like; *sagotram*, 'together with the *gotra*', i.e. *gotra* only—at some place the reading is 10 *swagotraka*—containing these.

Along with *Kaṭha* and the like others, *samānam* one who studies the *Brahma*, i.e. a branch of the *Vedas*, is a *sabrahmachāri*, 'of the same school'; such a portion. *Sabrahmachāriham*, 'the scholastic title' of the debtor and the creditor, the fact of their pursuing the study of 15 *Kaṭha* or a like other branch (of the *Vedas*), *ātmiyam*, 'of one's' i.e. of the creditor and the debtor, *pitara*, 'the parents' their names. By the use of the word *ddi*, &c. are included the amount, its kind, and quantity, and the like; marked with these, should be made.

By the use<sup>2</sup> of the word *tu*, 'however', are excluded those made 20 under compulsion or by fraud; by the second use is excluded one without a document when the document is written by another. This, moreover, should be borne in mind, that even if written by another, a document if admitted to be an extremely honest transaction is good evidence even if it be without a witness; otherwise, however, the decision is to be reached 25 by means of witnesses. There, the document is used as a means of reminder to the witnesses.

*Artha*, 'the contract', when (it is) completely written down; *rni*, 'the debtor', *yadatra patre lekhitam*, 'whatever has been written in this document', that, *matam me amukhaputrasya*, 'has the assent of me the son 30 of so and so.' Thus, after having written this in order, he should write his own name with his own hand, and enter it in the document.

In the case of one ignorant of writing, Vyāsa states a special rule: "A debtor who is ignorant, should cause his assent to be written; or even a witness (who is ignorant), by a witness, or by any other, in the 35 presence of another and the witness." (86).

'With witnesses', so has been stated. There, the Author mentions the male—*ādikshinascheti*, 'witnesses, &c.', *samāh*, 'equal', i.e.

1. ग्रः—either the bright or the dark half of a month, ग्रं व ग्र०.

2. i. e. in verse 84.

with equal qualifications, *te*, 'these', i.e. the witnessees, *sacapitṛndmā-lekhinapūrakam*, 'with their father's names written before', *atra*, 'in this transaction', *aham amukah*, 'I, an and so' by name, *sakshi*, 'am a witness', thus *swahastena*, 'in their own hands', *likheyuh*, 'should (they) write'. Those who are ignorant of writing should cause it to be written; this is indicated as an addition by the word *ch*. (87).

*Tataḥ*, 'thereafter', i.e. after the name of the witness was written, *lethakah*, 'the writer', i.e. the writer of the document, *ubhabhyām*, 'by both' i.e. by the creditor and by the debtor, *arthitena*, 10 'being requested', by name so and so, by myself this, *likhitam*, has been written, thus *ante*, 'at the end', i.e. rounding up the remaining portion of the document to be written, himself *likhet*, 'should write'.

By the use, twice, of the word *hi*, the object of recording the request, and also the understanding of the import of the document, has 15 been pointed out. (88).

*Vināpti*, 'even without, &c.', has been explained before. By the use of the word *tu*, is excluded a document written by another and executed with attestation. *Sarcam*, 'all that', by this is expressed all 20 the writings, viz., of the plaintiff, witnessess, the writers of the documents, etc. (84-89).

### S'ulapāṇi.

#### Yajñavalkya, Verses 88, 89.

The meaning (of Verse 88) is plain.

A document written by the hand of the debtor, even though it be 25 without attestation, still it is good evidence, provided it does not happen to have been caused to be made under compulsion or by fraud. *Upiddhiḥ*, 'fraud' i.e. deceit. So *Bṛhaspati*: "A document executed by a dying person, an enemy, one oppressed with fear, a woman, a suffering person, one intoxicated, distressed by a calamity, at night, by fraud, or by force, 30 does not hold good". (89).

While discussing the rules about documents the Author mentions the rule that a debt entered into a document should be paid by three (generations in descent) only.

## Yājñavalkya, Verse 90 (1).

A debt evidenced by writing should be paid however by (persons in) three (generations) only.

**Mitâksharâ** :—As a debt evidenced by a witness should be given by three (generations) only, so also it is ordained that a debt evidenced by a document should be paid by the borrower, his son, and the sons of that son i. e. by three (generations) only, and not by the fourth and others.

An objection :—Indeed by the text<sup>1</sup> “sons and grandsons should pay a debt”, it has already been established as a general restrictive rule that a debt should be paid by three only.

The answer :—True. But this text has been mentioned with a view to meet a suggestion which may likely be made that a debt entered in a document might be understood as an exception to this general rule on the strength of its having been found in another *Smṛti*. For, after mentioning the characteristics of a document it has been said by kâtyâyana : “Thus, o ancestral debt is made payable after the (proper) time has passed”. Thus an ancestral debt which is entered into a document is made payable even though the time (for payment) has passed. Here by the use of the plural in *pitrñām*, ‘of the ancestors’ as also from the expression ‘time has passed’ it is inferable that the fourth

\* PAGE 55. (descendant) and others may be made to pay<sup>2</sup>.

Moreover, Hârita also has said: “To him in whose possession the document purports to be, should payment be directed to be made.” Here also by the general rule that ‘the debt is his who has the document in his custody’, the inference arises that the payment of debts may be made to the fourth (descendant) and others. Therefore it is proper that the present text is for the purpose of removing the doubt. The two texts, moreover, should be supplied in pursuance of the text of the *Lord of the Yogis*<sup>3</sup>.

1. Verse 50 See p. 782.

2. See *Manit Ullah vs Damodar Prasad* 53 I. A. 204; 48 All 518 Also *Sheo Ram vs. Durga* 3 Luck, 700. Where the Privy Council held that a son was bound by the sale of ancestral property by the father for paying off a debt of his grandfather i. e. the grandfather of the son.

3. i. e. The sage Yājñavalkya.

The Author mentions an exception to it  
**Yājñavalkya, Verse 90.(2).**

A pledge, however, is enjoyed as long as it is not paid off.

5 **Mitakshara**—The non-liability for paying a debt having become established by the (general) rule in the text: “A debt is payable by three only, although it is reduced to writing and is with a security,” an incapacity for recovering a debt might also be inferred. With a view to ( avoid ) this, the Author has stated this ( text ).

10 By saying that ‘a pledge may be enjoyed even as long as the debt is not paid off, whether by the fourth or the fifth’ a capacity has been indicated in favour of even the fourth ( person in descent ) for redeeming a secured debt.

15 An objection!—But this too has been once stated already in the text<sup>1</sup>: “a usufructuary pledge never lapses”.

The answer—True, still if this text which is in the nature of an exception, were not given, it ( i. e. ) the capacity would be confined to three persons only. Thus everything is without a fault.

### Viramitrodaya

20  A document, sometimes is not regarded as conclusive evidence. The Author states that

**Yājñavalkya, Verse 90.**

A loan which has been entered in a document, *tribhiresa*, by (descendants to) three (generations) only, *deyam*, ‘should be paid’. By 25 the use of the word *eva*, ‘only’, are excluded the great-grandson and others. Therefore the meaning is that even if there be a document, a loan cannot be enforced against a great-grandson and others. By the use of the word *tu*, ‘however’, is excluded the liability of the grandson to discharge a surety liability included and joined to the word *rūpam*, ‘debt.’

30 *Adhik*, ‘a pledge’, a possessory pledge such as land, &c., *tārat bhujyate*. ‘is as long enjoyed’, *yāmat*, ‘as long’, *tad*, ‘that’, pledge, i.e. that debt is not paid back by the debtor to the creditor. The meaning is that in that way, therefore a document of pledges evidences a good claim even beyond three generations. (90).

S'ûlapâni.  
Yâjñavalkya, Verse 90.

A loan as described before entered in a document, excepting a pledge, should be paid by (members of) three generations; not, however, by the fourth. In regard to the rule laid down in the text<sup>1</sup>: "by the son and the grandsons the debt must be paid", this text is intended for limiting it. Where a debt has been advanced after taking a pledge, there this rule does not apply; so Manu<sup>2</sup>: "In regard to (amorous) women, at marriages, for the cow's fodder, as also for fuel, and (in anything) in favour of a Brâhmaṇa, for a (false) swearing there is no sin". (90). १०

Having disposed of a matter which had occasionally arisen, the Author resumes the subject in the context proper.

Yâjñavalkya, Verse 91.

If a document is in another country, is badly written, or is lost, as also, if it is stolen; likewise if it is torn, burnt, or cut asunder, another should be allowed (by the king) to be made (in its place).

Mitâksharâ:—The rule which is now being laid down is that when a document has become unfit for a suit, another should be made. And unfitness for a suit arises, when the document is des'ântara-shté, placed in another country, which is at a long distance; durlekhye, when the document is badly written, that is—wherein the writing i. e. the character or words are bad i.e. ambiguous or unintelligible, is (called) a badly written document; in such a badly written document. Nashté, lost, i. e. in course of time; unmîshṭé, effaced, i. e. where the characters and letters have been rubbed off on account of the weakness of the ink.; hrîtē, stolen, i.e. by robbers &c.; bhinne, torn, i. e. tattered; dagdhe, burnt, i. e. has taken fire; chhinne, cut asunder, i. e. when it is cut into two separate pieces.

This (rule applies), moreover, when there is mutual consent of the plaintiff and the defendant. In the case of a difference, however,

1. Verse 50 p. 792.

2. Ch. VIII. 113. It does not appear why this verse is cited here.

and when parties go to law, time should be allowed (as may be necessary, for producing the document which is in another country, having regard to the inaccessibility and badness of roads.

- In the case of a document which is lying in a place which is 5 inaccessible, or which is lost, a suit should be decided by means of witnesses only. As says Nârada<sup>1</sup>: "When a document has been transferred into another country, or burnt, or badly written, or stolen, time should be allowed in case it should exist still; if it is not in existence, the evidence of those who have seen it decides the matter".
- 10 In the case of a document which exists i. e. is still in existence, for producing it from another country time should be allowed i. e. an interval of time should be granted.

- In the case, however, of that which does not exist i. e. has 15 ceased to be in existence, the suit should be decided by examining those witnesses who have seen it before. When, however, there are no witnesses, then the decision should be made by (a resort to) an ordeal, *vide* the text:<sup>2</sup> "In a suit where a document or witnesses are unavailable, the divine proof should be exhibited". This refers to a document between (private) citizens.

- 20 Similar is (the case with) a Royal grant. This, however, is the difference: "<sup>3</sup> A document is known as a Royal grant which bears on it the King's own handwriting, and which is marked with his own signet seals; it is (valid as) evidence in all transactions." Similarly another (kind of) royal deed<sup>4</sup> evidencing success has been mentioned 25 by Vṛddhavasiḥtha: "That is called a *jayapatraka* (a document evidencing success) in which is indicated the manner how the point at issue was proved, which contains the answer as well as the proof, and which has also the decision (recorded) in it. To the litigant who wins and who has established his point, the *jayapatraka* should be 30 delivered over impressed with the Royal seal and having the signature

1. Ch. I. 146.

2. Of Kātyāyana, Verse 224.

3. See Kātyāyana, Verse, 258.

4. A जयपत्रः a decretal document, *desrta*, a decree and judgment. *Jayapatraka* is a "certificate of success" supplied to the successful litigant as evidence of his success in the particular suit. A *Hinapatra*—"a certificate of defeat" is only evidence that a particular person was defeated in a particular plea or pleas in a certain litigation.

thereon of the Chief Judge in his hand." Similarly the councillors also should add in their own handwriting thus: "This is approved by me the son of so and so &c." *vide* the text of Manu: "And also the councillors such as are versed in the *Smritis* and the *S'astras*, should add (in) their own hand just as in the (case of) 5

\* PAGE 56. procedure (prescribed) for documents". Moreover, a proceeding is not declared to be free from defect except with the unanimous consent of the councillors, as says Nârada<sup>1</sup>: "That (decision of a) dispute is considered to be without a *dart* where all the members of the judicial assembly declare, 'This is right', otherwise the *dart* remains in it." 10

Moreover, this rule applies only in the case of a judicial proceeding which contains (all) the four components; *vide* the text<sup>2</sup>: "That is declared to be a *jayapatraka* which proves the matter in issue, which contains (all) the four components, and which also bears 15 on it the Royal seal." Where, however, there is a defeat, as in the text<sup>3</sup> "One who alters his former statement, one who shuns a trial at law, one who does not put in an appearance, one who makes no reply, as also one who absconds after being summoned—these are the five varieties of a faulty (*Hina*) litigant."—in such a case no *jayapatraka* is given, but only a *hinapatraka*—a certificate of a defeat. This (last) moreover is given with the object of imposing a penalty 20 in course of time, while a *jayapatraka* is (given) with the object of establishing the plea of *res judicata*. This is the distinction. 25

### Viramitrodaya

When a document, executed at the time of the transaction of the loan, by reason of its location in another country or a like cause, is not likely to be available for being proceeded upon at the time of the action, another document should be made. That, moreover, when agreed to by both is good evidence; so the Author says 30

### Yâjñavalkya, Verse 91.

When a document is *desantarastha*, 'located in another country', i.e. lying in a place other than the one in point; *dushte*, 'is faulty', i.e.

1. Ob. III. 117.

2. Of Kâtyâyana.

3. Nârada II. 33. The meaning is that here the plaintiff was put out of the court on account of a defeat in his side; and not that the defendant got success after a contest.

the letters in which are ambiguous ; *nash̄īs*, 'is lost', by the paper being destroyed ; *unmṛṣṭīe*, 'effaced' owing to the weakness of the ink, the letters in which are rubbed off ; *bhinne*, 'torn', i.e. on account of the papers being separated, cut into two ; *dagdhe*, 'burnt', by fire; or 5 *chhinnīs*, 'cut asunder', i.e. being cut into tatters, being split into two ; *annyallekhyam*, 'another document', *kārayet*, 'should be caused to be made'.

- By the use of the word *tathā*, 'likewise', is included the compound word formed ; and by *cha* is included the one taken away by a thief.
- 10 By the use of the word *et̄*, 'also', the making of another document is excluded in the absence<sup>1</sup> of its being located in another country, &c. If the other side, with a sinful desire for appropriation, does not accept the former document, then after having established (the fact of) the former document by means of witnesses and the like means, another document 15 should be made. (91).

## S'ūlapūpi.

## Yājñavalkya, Verse 91.

- Unmṛṣṭīe*, 'effaced', brought about by a defect in the ink; by the use of the word *bhinne*, 'torn', i.e. cut, *chhinnīs*, 'tattered', i.e. shattered, 20 another document with the consent of both may be caused to be made. (91).

The Author mentions the ways of deciding a case when a doubt or dispute about document arises

## Yājñavalkya, Verse 92.

- The genuineness of a doubtful and disputed document 25 may be established by (comparison with other) documents and (other writings) of the party (written) in his own hand, and by similar other means; as also by presumption, by confrontation of parties, by direct proof, by marks, by previous connection, by (a probability of) title and by 30 inference.

Mitāksharā.—*Lekhyasya*, of a document, *sandigdhasya*, 35 which has been doubted as to whether it is genuine, *s'uddhiḥ*, the

1. i.e. the several circumstances mentioned in the text such as its being in another country, or lost &c.

genuineness, syāt, becomes established, swahastalikhitādibhiḥ, by comparison with other documents and similar (other writings) of the party, i. e. by (establishing) the genuineness by (means of) another document which was written by him in his own hand. The meaning is that if the letters are similar, the genuineness would be established.

By (the use of) the expression, ādi, such other, it is implied that the genuineness is established by (pointing out) a similarity with other writings of the witnesses, or the writer, written in their own hands (with the one in dispute). A conclusion arrived at by regard to probability is a presumption, yuktiprāptih; Prāptih—is the (presumption arising from the) connection with the thing in dispute, with the country, period, and persons. A yuktī—is a probative reasoning as e. g. in ‘It is probable that this (particular) thing may belong to this (particular) individual’, kriyā, direct proof; i. e. the adducing of witness evidence on the point; chinham, marks, i. e. distinctive marks such as a Sri (३) &c.; sambanhdhah, previous connection, i. e. the mutual relations of advance and acceptance (of loans), even before, between the plaintiff and defendant on account of mutual confidence; āgamah, title, e. g.—“he has established a reliable origin of title to the subject-matter in dispute by so much.”—These only are the circumstances. By means of these circumstances the genuineness of a disputed writing may be established. This is the context<sup>1</sup>.

When, however, a decision cannot be arrived at in the case of a disputed document, then the decision should be made by the help of witnesses, as says Kātyāyana<sup>2</sup>: “When (the genuineness of) a document is disputed the plaintiff should cite those (as witnesses) who appear therein.”

This text applies to a case where it is possible to have witnesses. In the case, however, where it is not possible to have witnesses, the text of Hārīta applies, viz.—“Where a party says—‘I did not execute this document, he (i. e. the other party) has forged it’—then keeping aside that document, the decision should be made by means of an ordeal.”

1. संज्ञा—the order or connection of words in a sentence.  
2. Verse, 283.

## Viramitrodaya

The Author mentions the means of removing the doubt about the unreliability of a document.

## Yājñavalkya, Verse 92.

- 5 Of a document regarding which a doubt has been raised as to whether it is genuine or not genuine, *suddhiḥ*, 'genuineness', i.e. the certainty of its goodness is determined by noting a good resemblance between it and another writing which is (admittedly) written by the opponent with his own hand. By the use of the word *ādi*, 'and the like', 10 it is indicated that with the handwriting of the writer of the document in which the witnesses have subscribed, on a comparison with another document, the appearance of a good resemblance with the writing of the document would establish the genuineness.

15 *Yuktī*, 'presumption', i.e. a contrary inference from the statement i.e. 'At present there is no money, it will be paid by me in another month', and the like. *Praptī*, 'receipt', i.e. the receipt of interest stipulated in the document of loan; *kriyā*, 'proof', in the form of statement of witnesses; *chinham*, 'mark', a special mark particularly characteristic of the writing by the opponent, e.g. *śri*, etc.; *sambandhah*, 20 'connection', such as in regard to the subject-matter of the dispute such as an ear-ring, &c., a finding about the relationship of a creditor, &c., *āgamah*, 'title', i.e. of the subject-matter of the suit, such as a purchase, &c., before that; by these causes also the genuineness may be established. (92).

## S'ūlapāṇī.

## Yājñavalkya, Verse 92.

25 *Yuktiprāptīḥ*, 'presumption by confrontation', in this form:—"In this time, at such a place, it appears probable for this man to have his property, and in the like"; *Kriyā*, 'direct proof', i.e. the evidence of the witnesses; *chinham*, 'marks' i.e. special signs; *sambandhah*, 'connection', i.e. of the person offering and the one accepting; also by former writings &c. in his own hand a connection with the acceptance, a document about which a doubt has been raised, one may be examined.

30 By the use of the word *ādi* are included the hands of the witness, of the writer, and of himself. So says Kātyāyana: "When there is doubt about the hand-writing of the debtor, whether he be living or dead, (by a comparison) with other documents written in his own hand, the decision about the documents (in question) should be reached". (92).

Thus when after the document is established as genuine, as also the liability to pay the debt (a question might arise as to), what should be done if a party is unable to pay the entire debt? So the Author says

## Yâjñavalkya, Verse 93.

5

The debtor should write on the back of the bond each payment made by him after making such payment; or the creditor should endorse the amount received by him marked in his own hand.

Mitâksharâ:—When the debtor is unable to pay the entire debt, then he should pay according to his means,

10

An endorsement and write the same on the back of the bond thus: "So much was paid by me;"—or the creditor should endorse i. e. write on the back of the document itself whatever amount was upagatam, received, i. e. got by him, thus,—"So much was received by me." How?—swahastaparichinhitam, marked in his own hand, i. e. marked by letters written in his own hand. Or, (it may mean this) viz. that the creditor should give to the debtor a note of acknowledgement of receipt marked by letters written in his own hand.

15

## Sûlapâni.

20

## Yâjñavalkya, Verse 93.

When the debtor is unable to discharge the entire debt, as much amount as he pays, so much the debtor should cause to be endorsed on the back of the debt-bond. The creditor also should give a writing for the endorsement. As says Vîshnû<sup>1</sup>: "When the whole amount in entirety has not been paid, the creditor should pass a writing in his own hand". (93).

25

What should be done with the document when the entire debt has been paid off? so the Author says

## Yâjñavalkya, Verse 94. (1)

After paying the debt, the document should be caused to be torn, or another should be caused to be made for (evidencing) the acquittance.

30

Mitâksharâ :—Either by instalments or at once, in its entirety datwâ, having paid, *rnam* a debt, lekhyam, the document, executed before, should be caused to be torn.

When, however, the document happens to be in an inaccessible place or is lost, then the debtor kârayet,

\* Page 57. should cause, the creditor to pass to him another document sudhyai, as evidencing the acquittance.

i.e. discharging him from his obligations as debtor. The meaning is that the Creditor should pass a deed of discharge to the debtor in the order mentioned before.

---

10 What should be done when a debt incurred in the presence of witnesses is to be discharged entirely ? so the Author says

Yâjñavalkya, Verse 94 (2)

And a debt which was incurred before the witnesses should be paid off in the presence of witnesses.

15 Mitâksharâ :—That debt, however, which was incurred before witnesses should be paid off only in the presence of those who had previously witnessed it.

Here ends the Chapter on Documents.

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### Viramitrodaya.

20 Just like the document of the loan, the document evidencing its discharge is also a good evidence ; so intending, the Author says

Yâjñavalkya, Verses 93, 94.

Leckyasya, 'of the document', i.e. of the paper, prâkhe 'on the reverse' side, as he goes on paying the amount in small instalments, so after each payment, *rniko abhilikhet*, 'the debtor should write.' After having paid the entire loan, however, the document of loan given by himself, *pdःayet*, 'should cause to be torn', i.e. should be cut into pieces.

30 When, however, the debt-bond is not at hand, sudhyai, 'for the acquittance', i.e. as evidencing the certainty about the cessation of his liability as a debtor, annyallekhyam, 'another document', reciting the fact of the discharge, kârayet, 'should be caused to be made'.

This is to be particularly noted: A debt which has been taken in the presence of witnesses, that should be paid off in the same manner. By the use of the word *cha*, it is indicated that in the absence of one's own handwriting, the mark of the handwriting of an honest man is to be admitted. By the use of the word *tu*, 'however', in a debt incurred without witnesses, the discharge in the presence of witnesses is excluded. By the use of the word *cha* is included a payment without witnesses of a loan incurred without witnesses. (93, 94).

Thus in, the Commentary on S'rîmat Yâjñavalkya,  
ends the Chapter on Documents.

10

## S'ûlapâpi.

Yâjñavalkya, Verse 94.

When the whole amount in entirety has been paid off, the debt bond should be torn. If, however, the document is not available, by way of evidencing the acquittance, another document should be caused to be made. When a loan has been taken in the presence of a witness, it must also be paid in the presence of a witness. (94).

Here ends the chapter on Documents.

## Chapter VII.

## OF THE ORDEALS.

20

Human evidence has been said to be three-fold viz. consisting of documents, witnesses, and possession.

It is now the turn of ordeals; and the Author wishing to expound ordeals as a means of evidence lays down the procedure in ordeals by the first five *slokas* commencing with "The balance, the fire &c." (Verse 95). There, presently, the Author mentions the ordeals

Yâjñavalkya, Verse 95 (1).

The balance, the fire, the water, the poison and the *kos'a*, are the ordeals, (prescribed) here for exhalation (from an accusation).

30

Mitâksharâ:—The five ordeals i. e. those beginning with the balaoco and eodioe with the *kos'a* should iha, here, i. e. in the *Dharma-Sâstra*, be offered for visuddhaye, exhortation, i. e. for removing an ambiguity about a doubtful point. [95 (1)].

5 Elsewhere have been mentioned other ordeals, even such as the rice and like others, *vide* the text of Pitâmaha: “The balance, the fire, as also the water, the poison, and similarly the *kos'a*, likewise the rice; these are the ordeals; and the seventh is the heated *Mâsha*.” Then why say these only? So the Author says

10 Yâjñavalkya, Verse 95 (3rd quarter).

These are (to be resorted to) in trials on serious accusations.

15 Mitâksharâ:—Etâni mahâbhîyoge shveva, these in trials for serious offences only. This restrictive rule<sup>1</sup> which is here laid down means that these are to be resorted to only in cases of serious accusations, and not that these are the only ordeals. The Author will mention further on the test of seriousness.

20 An Objection—‘Indeed, the *kos'a* also is prescribed even in ordinary suits’—*Vide* the text<sup>2</sup>—“The (ordeal of) *kos'a* should be caused to be offered even in small (charges).”

The Answer—True. The mention of (the ordeal of) *kos'a* among (those of) the balaoco and others is not indicative of its being limited to serious charges only, but it implies its extention even to Sârashtambha<sup>3</sup> complaints, otherwise it would be extended even to 25 complaints on suspicion. *Vide* the text<sup>3</sup>: “In the case of those against whom a complaint has been made together with a wager, (the ordeals of) balaoco and the like should be ordered; while (the

1. Of Pitâmaha.

2. A complaint wherein the complainant undertakes to pay a penalty in the case of his failure in establishing his allegations is called a Sârashtambha Complaint—an *Aasphambha* is explained as—प्रति विवरितं शेषः;

3. Of Pitâmaha.

ordeals of) the rice and the *kos'a* (should be) in complaints of suspicion only. There is no doubt about this."

It may thus be thought that this rule may be applied invariably in the case of serious complaints, complaints on suspicion, and complaints with a wager, so the Author mentions an exception

5

### Yājñavalkya, Verse 95. (last quarter.)

When a plaintiff<sup>1</sup> has (agreed) to abide by the result (of the ordeal).

Mitāksharā :—These i. e. the (ordeals of) balance and others become applicable to the plaintiff abhiyoktari sīrshakastha, 10 when the plaintiff has (agreed) to abide by the result (of the ordeal).

Sīrshaka—is the head i. e. the fourth part of a suit indicative of the success or defeat—and by this is indicated the punishment.—He who agrees to abide by it is a Sīrs'hakaithah, i. e. amenable to the 15 punishment laid down in it (i. e. the decision).

### Viramitrodaya.

It has been stated<sup>2</sup> before : 'In the absence of any of these, the ordeal is said to be another'. There, the Author expounds the ordeals by an entire chapter

20

### Yājñavalkya, Verse 95.

Bṛhaspati<sup>3</sup> : "The (ordeal by) balance, fire, water also; poison, and *kos'a* the sacred water the fifth; (of) rice has been declared as the sixth; and the seventh the heated māṣṭha coin; eighth has been stated to be the ploughshare; and Dharmn, the ninth. All these ordeals 25 have been pointed out by the Self-born".

Of the nine ordeals thus enumerated, these five ordeals, i. e. the balance, &c., in serious charges only, such as gold-stealing and the like for the sīrshakastha, 'one who has agreed to abide by the decision',

1. विभक्तः—Lit. person making complaint.

2. i. e. the restriction is as to their application, and not as to the kinds.

3. Ch. X. 4-5.

i.e. the complainant for *cisuddhaye*, 'for his exoneration', for the removal of suspicion (against him) *ika*, 'here', i.e. in the Dharma Sâstra have been prescribed. *Sîrshaka* means the offer to hear the penalty upon the success of the matter of the ordinal.

5 If it be argued that having regard to the text: 'the *Kośa*, may be administered even in petty cases', even in charges of a small character, there is *Kośa*; the answer is, true, it is so. But, under the text: "For those against whom an accusation has been brought (unaccompanied) with a wager, one should direct the (ordinal of) balance and the like; the rice 10 also and also the *Kośa* in cases of suspicion, no doubt", in accusation accompanied with a wager the *Kośa* not being mentioned, this mention of the *Kośa* 'for a plaintiff who has agreed to abide by the result' is by way of an exception. As for: "In cases where the plaintiff has not offered to abide by the result, then four ordeals viz., of the balance and 15 others should be avoided; *Kośa* has been stated to be where the plaintiff has not (so) agreed". In this text of Pitâmaha, *Kośa* has been stated to be where there is no agreement by the plaintiff to abide by the result; that has a reference to an accusation based on suspicion. (95).

### S'filapâpi

20 In the absence of a document, or in the absence of a possibility of a decision about a document, is the ordeal. That the Author states

Yâjñavalkya, Verse 95.

The balance and those other ordeals *Mahâbhîyogeshu*, 'in charges for serious offences', such as gold-stealing &c. *Abhiyuktari Sirshakasthe*, 25 'when the complainant has to abide by the result', *tha*, in this Sîtra, have been stated. *Sirshaka*, is the head. That, moreover, here in the case of the success of the opponent, has been agreed to by oneself.

In minor charges, however, as stated in other *Smritis* the rice should be given. The oaths, moreover, should be caused to be taken in the form of 30 the touching of the son's head or similar other acts. These Brâhaspati mentions: "The balance, fire, water, poison, and fifthly the *Kośa*; the rice has been declared as the sixth; the seventh, a heated *Mâsha*, is declared. The ploughshare, the eighth, and the ordeal by Dharma as the ninth". (95).

35 By the text<sup>1</sup> "Next the plaintiff should immediately have written down the evidence by means of which the matter in dispute

1. Verse 7 See p. 660.

(or alleged) is (proposed) to be established ", the rule of evidence for an affirmative allegation only has been laid down. The Author says by way of an exception to it.

Yâjñavalkya, Verse 96 (1).

\* PAGE 58.

Or, by consent, any one may perform (the ordeal), and the other may submit to the judgment<sup>1</sup>.

Mitâksharâ:—Ruchyâ, *i. e.* by the mutual consent of the complainant and the defendant; anyatarah, *any one*, *i. e.* either the complainant or the defendant, kuryât, *may perform*, the ordeal, itarah, *the other*, *i. e.* the defendant or the complainant (as the case may be), wartayet, *should submit to*, *i. e.* take upon himself the sirah, *judgment*, *i. e.* to the corporeal or pecuniary punishment (specified therein).

The meaning is this: Ordeal evidence cannot be confined to the affirmative proof alone, as is the case with human evidence, but it is established both by affirmative and negative proof. And hence in the plea of denial, or of confession and avoidance, or of res judicata, an ordeal is permissible according to the option either of the plaintiff or of the defendant.

Viramitrodaya.

It has been stated<sup>2</sup> that, "when there are witnesses for both sides, those for him who claims priority should be taken first." There the word 'witness' is merely indicative of evidence; an ordeal is intended for a particular (kind of) plaintiff, 'Never should any one order a complaint for an ordeal again' in this text has been stated by Maṇu also. The Author states an exception to it

Yâjñavalkya, Verse 96 (1).

Of the plaintiff and the defendant, of both, whosoever may have a desire for an ordeal; thus where there is their desire for a performance (of an ordeal) or for its non-performance there the rule 'when

1. शृङ्गः—Lit. means the head, the top. *i. e.* last or fourth part of a trial, *i. e.* that part which declares the success or defeat of parties and the punishment consequent upon it.

2. *... Verse 17 above*: p. 695.

Tat्त्वाल्क्या]  
Verse 90 (2).]

moreover, refer to petty disputes over small amounts. Vide the text of Nārada<sup>1</sup>: “(Let him be aworn by) the<sup>2</sup> truth, vehicle, and by his weapons, as also by his cows, grain, and gold; venerable deities or revered ancestors, by their pious gifts or meritorious deeds. He should (be made to) touch the head of his sons or wives, or even of his relatives. Or in all charges the drinking of the *kos'a* water also—These are the (kinds of) oaths prescribed by Manu in petty cases.”

Although oaths also are regarded as an ordeal by reason of the fact that an ordeal is generally understood by the people to be that which decides a point which

The oath cannot be determined upon by (means of) human evidence, still a distinction is indicated between these and the ordeals of the balance and others in that, (while) the one is resorted to by reason of the fact that while in the case of one<sup>3</sup> a final decision is obtainable immediately without any interval of time, in case of the other a decision is obtained only after an interval of time, on the analogy of the rule in the ‘Brāhmaṇa and Parivrajaka’ maxim.<sup>4</sup>

1. Ch. I. 248-250.

2. Ways of swearing several oaths have been given by Manu Ch. VIII.

113. see Supra. p. 860 ll. 10-20.

3. This passage requires an explanation. Ordeals are of two kinds. (1) One in which the truth or falsehood of a claim is determined immediately on the spot without any interval of time, and (2) the other which requires some interval of time for a like determination. The ordeals of the balance, fire &c. are instances of the first, because if the man suffers injury in the performance of the ordeal, his defeat is determined then and there. The ordeal of an oath is an instance of the second, inasmuch as under the rules of this ordeal if any calamity befalls a party within a certain period after he takes an oath, he is presumed to have taken a false oath. This necessarily requires an interval of time to elapse. Thus the two types are distinguishable on the ground of their capacity to induce a prompt or a deferred decision (समन्तरानिर्णयविभिन्नतेन & कालीग्रन्थिगमित्तरेन).

3. This is called the ब्राह्मण-परिव्राजक-व्याप. In such a sentence as ब्राह्मणव्यापव्य परिव्राजकः the separate and additional mention of परिव्राजकः, who generally are included in the former term, merely emphasises their position as a special part of the general body. So here also, although the balance and oaths equally are both ordeals, still the latter have been specifically mentioned in order to bring out their capacity to induce a decision after an interval of time.

The enumeration, however, of (the ordeal of) *kosa* along with  
 (those of) the balance and the rest is due to its  
 applicability to serious charges and to complaints  
 accompanied by a wager, and not to (any)

5 similarity with the ordeals of the balance and the rest, nor to its being  
 helpful in enabling an immediate decision without any interval of time.

As for the (ordeals of) rice and the heated *masha*, although  
 they are helpful in securing an immediate decision  
 10 Rice and *Masha* without any interval of time, still as they are  
 prescribed in petty complaints and in complaints  
 on auspicion they are distinguished from the (ordeals of) balance and  
 the like and hence their non-enumeration along with those; and this  
 is a satisfactory explanation.

These ordeals and the oaths also may be resorted to in disputes  
 15 regarding debts and the like, having regard to exigencies.

As for the text of *Pitāmaha*, viz. "In disputes regarding  
 immovables, ordeals should by all means be avoided", that is to be  
 understood as meaning that when evidence in the form of documents  
 20 or (the testimony) of neighbours and the like is available, ordeals  
 should by all means be avoided.

An objection.—Indeed ordeals are also inadmissible even in  
 other suits when other (kind of) evidence is available.

Answer.—True. In suits for the recovery of debts and the  
 like, (nevertheless) even after the plaintiff has exhibited his witnesses  
 25 (duly) qualified as mentioned before,<sup>1</sup> if the defendant resorts to an  
 ordeal after giving an undertaking to suffer punishment (in case of  
 failure) then an ordeal is also permissible. For it is likely that the  
 witnesses may have corrupt motives, while an ordeal is free from all  
 30 (such) faults, and the object of a law-suit is to find out the truth  
 about the point in dispute, as indicated in its definition. As says  
 Nārada<sup>2</sup>: "A decision based on an ordeal which is truth itself is  
 a real decision according to *Dharma*, while a decision based on  
 witness evidence is a merely legal decision. When a point can be

1. Verses 68, 69, p. 846.

2. Intro. Verse 11—The second half of the verse is different.

established by divine evidence, human or documentary evidence should not be used." The rule viz. "in disputes regarding immovables, when direct evidence such as the evidence of neighbour or the like is available, an ordeal should not be allowed even if the defendant resorts to it after giving an undertaking to suffer punishment (in case of failure)"—has been stated to remove the idea of an alternative<sup>1</sup> course. The text of Pitāmaha, viz.: "in disputes about immovables &c." is not intended to exclude ordeals absolutely as otherwise there would be the possibility of a non-decision when documentary evidence, testimony of neighbours, or similar evidence is not available.

5

10

"When the plaintiff has (agreed) to abide by the result," thus it has been stated; the Author states an exception to it

Yājñavalkya, Verse 96 (2).

When there is an accusation of a unexpected treason against the king, or a heinous sin such as Brāhmaicide is suspected, ordeal may be performed without an offer of an agreement to abide by the result. By the word *atha*, 'and also', are included theft and the like offences.

That has been stated in the Kālikā Purāṇa: "In charges for adultery with other men's wives, as also for theft, and forbidden intercourse, and for great sins, shall an ordeal be ordered by the king. When there is a mutual conflict, and a wager is laid in a trial, then only the king should administer an ordeal preceded by an agreement to abide by the result. In an accusation for adultery with others' wives, where the complainants happen to be many, an ordeal shall be ordered without an agreement as it is for self exculpation." Vishnu: "In charges for treason against the king, and also in assault, the proceedings are commenced without an agreement to abide by the result." Pitāmaha: "For those who have fallen under the suspicion of kings, as also those who have been pointed out along with robbers, and also those who are anxious to have their innocence established, the ordeal should be offered with an agreement to abide by the result." Nārada: "Even without an agreement to abide by the result the king may administer

1. The meaning is that the alternative of an ordeal as an optional course is not allowed in disputes regarding immovables. The optional application has been restricted to specific cases. For *śrey* &c. See note 4. on pp. 708-709 above.

2. Ch. IX. 22.

3. Ch. I. 270. . . . .

ordeals to his dependents." Also<sup>1</sup>: "An ordeal is proper only when the complainant offers to abide by the result of the test, excepting when ordered<sup>2</sup> by the king." 96 (2).

### Sūlapāṇi.

#### Yājñavalkya, Verse 96.

The person complained against, or the complainant may at their option (any one may) perform the ordeal. The other should offer to abide by the result. In cases of treason against the king, and in grave sins and the like (charges), however, even without any offer, the ordeal should 10 be performed. Ay says Viṣṇu: "In charges of treason against the king, and of Sāhasas even without an agreement to abide by the result". Pitāmaha: "In cases where persons have fallen under the suspicion of kings, and also those who have been pointed at along with robbers, and those who are anxious to get themselves exonerated, an ordeal may be 15 administered without any offer (from the other side)". (96).

### General Rules of procedure as to Ordeals.

#### Yājñavalkya, Verse 97.

Having summoned one who has clothes on, who has bathed, and has observed a fast, (the Chief Judge) should 20 at sunrise cause him to undergo (any of) all the ordeals in the presence of the King and of the Brāhmaṇas.

Mitākṣhara:—Moreover, Prādvivākāḥ, the Chief Judge āhūya, having summoned, at sunrise one, who on the previous day uposhitam, has observed a fast i.e. on the previous day, 25 sachailam snātam, and who, has bathed with clothes on in the presence of the king, as also of the Brāhmaṇas and Concillors, kārayet, should cause him to undergo, (any of) all the ordeals sarvāṇi divyāṇi.

1. Narada Oh. I. 269.

2. वृष्टासनात् is the reading in Viramitrodaya. The printed text of Nārada has वृष्टिसनात् 'excepting in cases of high treason'.—यस्य पुनर्देष्ये काचिद्देशं इता मवति असहायः

3. Oh. IX. 22., .

"To one who has fasted for three nights, or to one who has fasted for one night only, and who has purified himself and has wet clothes on, ordeals should always be administered". This optional rule as to fasting as laid down by Pitāmaha is to be actually interpreted by regard to the strength or weakness of the party, as also to the importance or triviality of the charges under consideration. The rule as to fasting, moreover, is applicable also to the Chief Judge who causes the ordeal to be undergone: "In the case of ordeals, (also) the Chief Judge who has fasted should by the King's permission himself observe all the necessary forms." *Vide* this text of 10 Pitāmaha.

Here also although the expression used is "at sunrise" without any particularisation, still having regard to the practice among the wise and the respectable, the ordeals should be administered on a Sunday. And even there, the special rule laid down by Pitāmaha,<sup>1</sup> should be observed *viz.*:—"In the first part of the day, shall be the test by fire; during the first part also shall be the balance; in the midday, however, the (ordeal of) water should be administered by one who desires to allow the principles of *Dharma*. In the first part of the day is proof by (the ordeal of) *kosha* ordained; while in the latter part of the night which is quite cool, (the ordeal of) poison may be offered."

As for the ordeals of the rice, the heated *masha*, and the like for which no special period has been prescribed, the administration should be also in the first half (of the day), *vide* the text of Nārada<sup>2</sup> which is quite general *viz.*—"In the forenoon, in regard to all the ordeals, has the administration been proclaimed."

Dividing a day in three parts, the first part is called the *Purvāñha*<sup>3</sup>, the middle the *Mādhyāñha*, and the last the *Aparāñha*.

Moreover, another rule as regards the particular time has been indicated by texts which are in the nature of affirmative and negative injunctions: Of these, those indicated by affirmative injunctions

1. Also Nārada. See Aparākṛta p. 597.

2. Ch. I, 269.

3. Translated either as First part or "forenoon."

are as follows:—"For (the ordeal by) fire the cold seasons<sup>1</sup> of *Sis'ira* and *Hemanta*, also the antum season of *Varṣhā* have been prescribed ; in the *S'arat* and *Grīshma* seasons the (ordeal by) water is (administered), and in the seasons of *Hemanta* and *Sis'ira* the (ordeal of) poison. The month of *Chaitra*, and of *Mārgaśirṣha*, as also of *Vaiṣākha* are months generally for all the ordeals as they are not unfavourable to these. The (ordeal of) *koṣ'a*, however may be administered always, and the balance at any time." The mention of *koṣ'a* is indicative by implication of all the oaths. Moreover the (ordeal of) rice may be administered at all times, since no special rule is mentioned (for it).

That indicated by negative injunctions is as follows—"In the cold season, 'there cannot be a purification by (the ordeal of) water, nor can there be in the hot season a purification by fire. Not in the rainy season should (the ordeal of) poison be administered, nor also in the midst of a heavy gale the (ordeal of) balance ; nor in the afternoon, nor in the twilight time, nor ever at mid-day".

By the use of the word *cold* (*S'ita*) in the text "there cannot be a purification by water in the season" the seasons of *Hemanta*, *Sis'ira*, and *Varṣhā* are also included by implication. And in the text : "nor can there be a purification by fire in the hot season," the repetition of the prohibition in the case of the *Grīshma* and the *S'arada* seasons which was already established by the affirmative injunction, is indicative of a *special* injunction (आदर्शम्). The circumstances justifying (on ordeal) however will be mentioned further on.

### Viramitrodaya

The Author states the procedure generally for ordeals

Yājñavalkya, Verse 97.

At the sunrise the Chief Judge should summon the performer of the ordeal who has bathed with clothes on and make him perform all the ordeals in the presence of the Brāhmaṇas, *vide* Pitāmaha : "To one

1. ऋगः—A season, or periods of the year commonly reckoned to be six, as : "सिंशिरं वसन्तं ग्रीष्मं पाषां वर्षं ग्राम्यम्" viz. *Sis'ira*, *Vasant*, *Grīshma*, *Varṣhā*, *Sarata* and *Hemanta*.

who has observed a fast for three nights, nor to one who has fasted for one night, should always be administered the ordeals, to one who has cleansed himself and has a wet cloth on." The opinion as to a three-nights' or one night's fast is to be determined by regard to the capacity (of the performer), and by a discrimination between a serious charge and a petty complaint.

Also "In regard to the ordeals, all acts the Chief Judge should perform like the Chief priest in a sacrifice, with the observance of a fast and under the order of the king." This fast of the Chief Judge, however, is in the case of the worship of the subordinate deities in the ordeal.

Here although it has been stated—"at the sunrise" in general terms, still from the usage of the respectable, Sunday is particularly meant. Vida' Nārada: "In the fore-noon only has been declared the administration of an ordeal". Pitāmaha: "In the fore-noon shall be the test by fire; and in the forenoon also shall be the balance; in the mid-day, however, should water be administered by one who desires to follow the principles of Dharma. In the first part of the day, the purification by *hos'a* has been ordained; while at night in the latter period should be administered poison, when it is quite cool". Similarly, "The month of Chaitra and also Mārgasīrsha, and similarly also Vaisākha, these are the months generally for all ordeals, as they are not unfavorable. The Balance has been stated to be for all seasons: it should be avoided when a violent wind is blowing. The (ordeal by) fire has been declared to be during Sīsira, Hemanta, and Varṣha; during the S'arad and the Grishma, the (ordeal by) water, and in the Hemanta and the Sīsira, the poison". Nārada: "During the cold season, there cannot be the purification by water; nor can in the hot season there be the purification by fire; not during the rainy season should poison be administered; nor, O king, during a violent storm, the balance". Here, in the word cold, are included the Hemanta, Sīsira and the Varṣha. By the word hot, are included the S'arad and the Grishma.

In the Astrology: "When Jupiter is in Leo or in Capricorn, as also when Venus is in obscenity, and in the intercalary month, the test should not be performed by one desirous of success. In a clean Sun, as also of the Jupiter. Nor when Venus has become invisible; also when the Sun is in the Leo, a test is not ordained by the wise. Not on the eighth, nor on the fourteenth, shall there be a test by

expiation. The test as also the inauguration shall be on a Saturday or a Monday".

Here, briefly the general procedure for ordeals is being written thus:—In the bright half, on an auspicious day, after having finished his daily performances, and with the observation of a fast, the performer after having got first the benediction repeated by the Brāhmaṇas, should select and appoint the Chief-Judge just as the chief Priest. The Chief Judge also after he is chosen and appointed, after the manner of the ritual of the consecration and donation of a tank, having performed the inauguration sacrifice, with the observance of a fast, on the day following, after having observed the daily performances, on a Sunday, should repeat this: "Come, O divine Dharma come; enter this ordeal, along with the Guardians of the world and the groups of the *Vasus*, *Ādityas* and the *Marutas*. There with a wet cloth on, the performer of the ordeal should perform the ordeal as ordained. Here the feet for three nights lie for a performer of the ordeal who is capable. This is the distinction. (97).

### Sūlapāṇi.

#### Yājñavalkya, Verse 97.

20      'At sunrise', i.e. In the fore part of the day. Nārada: "To a man who has observed a fast for a day and night, who has bathed and has a wet cloth on, In the fore part of the day has the administration of all ordeals been declared". By this, the expression "who has bathed with clothes on" has a reference to wet clothes.

25      By some even this verse is not repeated. But Viśvarūpa has included it in the text (97)

The author mentions special rules in the case of (several) persons liable (to an ordeal).

#### Yājñavalkya, Verse 98.

30      The (ordeal by) balance is (prescribed) for a woman, a child, an old man, a blind man, a cripple, a Brāhmaṇa, and one diseased; (an ordeal by) fire or water (is for Kshatriyas or Vaisyas respectively); for a Sūdra (the ordeal by) poison weighing seven barley-corns only.

Mitākṣhara—*stri*, *Women*, i.e. all women without regard to any particular caste, age, or position; *bāla*, a child, until he attains the sixteenth year, without regard to the particular caste; *vrddhaḥ*, an old man, i.e. one who is above eighty; *andhaḥ*, blind man, i.e. one deprived of the eyesight; *panguh*, a cripple, i.e. deprived of the use of the feet; *brāhmaṇa*, A Brāhmaṇa, i.e., the whole caste (Brāhmaṇa); *rogī*, diseased, i.e., one affected by a disease. The restrictive rule laid down is that for the purification of these, the (ordeal of) balance alone is allowed.

Agnih, the (ordeal by) fire, as also (that of) the plough (*Phāla*), and the heated māṣha<sup>1</sup> is for a Kṣatriya; jalam, water, alone is for a Vais'ya. The word wa, or, has a restrictive sense. Vishasya yawāḥ, the barley-corns of poison, saptaiva, i.e. seven only are (ordained) Sūdrasya, for (the purification of) a 10 Sūdra.

By ordaining the (ordeal of) balance for a Brāhmaṇa, and the (ordeal of) poison weighing seven barley-corns only for a Sūdra, the (ordeals of) fire or water come to be ordained for the Kṣatriya and the Vais'ya. This very thing has been made clear by Pitāmaha: "For a Brāhmaṇa the (ordeal of) balance should be offered, the (ordeal by) fire for a Kṣatriya, for a Vais'ya the water (ordeal) has been ordained, and (the ordeal of) poison should be administered to a Sūdra."

As to what has been said<sup>2</sup> that there should be no ordeal in the case of women &c. viz: "An ordeal should

\* Page 60. never be administered to persons engaged in performing a vow, to those afflicted with a heavy calamity, to the diseased, to the ascetics, or to women, if the rules of Dharma are to be attended to"—that is for removing the rule of option laid down in the text<sup>3</sup>—"or, with consent, the other may perform the ordeal."

1. माषः—is a particular weight-measure of gold; it is either the 1/20th part of a Pāṇa. 'माषे विद्युतिरप्ते भासी पाण्ड वर्केति':—or is the eightfold of a Gunja गुण्डमिट्टम्.—known in the Indian gold market as a māṣā (भासा).

2. By Nārada I. 256.

3. Of Yājñavalkya II. 96 see p. 913 l. 6-7 above.

The purport is this: In complaints regarding obstruction, when women are the complainants, the ordeal is allowed only for the persons complained against; and even when these<sup>1</sup> are the defendants, the ordeal shall be for the complainants only. In cross-complaints, however, an option only is allowed; and by this text even therewith, a restrictive rule has been imposed as to the balance only. Moreover, in complaints on suspicion about heinous sins, the (ordeal of) balance alone is prescribed for the women and others.

Thus this text has a purpose, in that it lays down a restrictive rule as to ordeals in the case of women and others when all ordeals are possible in the months of *Margas'irah*, *Chaitra*, and *Vais'ākha* which are common to all ordeals.

Nor, moreover, should it be supposed that, (the ordeal of) the balance alone is prescribed for women at all times, since a rule has been laid down for their purification by the (ordeals of) balance, *kos'a*, and fire, omitting (those of) the poison and water in the text<sup>2</sup>: "And the (ordeal by) poison has not been ordained for women, nor has the (ordeal of) water been laid down; the real truth at the bottom should be sought for from them by means of the (ordeals of) balance and *kos'a*"; similarly the rule should be applied in the case of a child and others.

Similarly, even in the case of the Brāhmaṇas and others also, the rule as to the (ordeal of) balance &c. does not always apply, vide the text of Pitāmaha *ti*: "Purification by (the ordeal of) *kos'a* is ordained for all members of all castes; all these ordeals hold in the case of all with the exception of (the ordeal of) poison in the case of a Brāhmaṇa. Therefore when at the common periods the ordeals are equally possible this text is intended to restrict it to that of the balance only. During other periods, however, the ordeals prescribed at the respective times are (allowable) for all. Thus: "In the rainy season fire alone is (prescribed) for all. In the seasons of *Hemanta* and *S'is'ira* there is an option in the case of the three castes, *viz.* of the Kṣatriya and others for the (the ordeals of) fire and poison. For a Brāhmaṇa, however, the (ordeal of) fire alone, and never (that of)

1. i. e. the women etc.

2. Of Nārada.

poison, is allowed; vide the prohibition (contained) in the text<sup>1</sup>: "with the exception of (the ordeal of) poison in the case of Brāhmaṇa." During the seasons of Grīshma and S'arada (the ordeal of) water alone (is allowed). Of those, however, for whom (the ordeals of) fire &c. are prohibited having regard to the special maladies from which they might have suffering, e. g. in the text—"The (ordeal of) fire should be avoided in the case of the lepers, and (that of) the water in the case of persons suffering from cough and heavy breathing; and the (ordeal of) poison should always be avoided in the case of persons suffering from bilious or phlegmatic complaints"—in the case of such persons, even in the periods (specially) mentioned for (the ordeals of) fire &c. the common ordeals of the halooce &c. alooe are allowed. Similarly, having regard to the text—" (The ordeals of) water, fire and also (of) poison should be administered to strong men"—even in the case of weak men, having regard to the prohibitive rule in general, such ordeals should be administered as are conformable to the (special) caste, age, and surrounding circumstances, and as do not offend against the rules as to seasons and time.

## Viramitrodaya.

In regard to the ordeals the Author mentions rules for the 20 performer

## Yājñavalkya, Verse 98.

For one who is below the age of sixteen, for the aged, for the blind, for a cripple, for a Brāhmaṇa, and also for one suffering from a disease, Balance is the ordeal. For a S'ādra, however, the Fire, Water, or of the Poison, (in which) portions measuring seven yaras may be given.

Nārada<sup>2</sup>: "For a Brāhmaṇa the Balance should be given, for a Kshatriya, the Fire, the consumer of oblations; for a Vais'ya should be given Water, and for a S'ādra Poison only. Generally for all, the kosa has been declared by the thoughtful, excepting the poison in the case of a 30 Brāhmaṇa; for all, however, the Balance has been stated".

Kātyāyana<sup>3</sup>: "For a member of the kingly order the Fire, the Balance for the Vipra, and for the Vais'ya the Water should be administered; or for all, all the ordeals, excepting the poison in the case of the

1. Of Pitāmis. See above.

3. Verses, 422-423.

2 Ch. I. 334, 335.

foremost of the twice-horn. The twice-horn who follow the occupation of teeding the cattle, the trades, also of artiaans and duocers, as also of messengers and usurera, should be given like as to a *S'udra*". Similarly<sup>1</sup>: "Not for the iron-smiths, the *Fire*, nor Water for the water-drinkera; also for those experts in the operation of incantation shouold *Poison* be ever administered. An ordeal should always be avoided for men suffering from diseasea; with the rice shouold be tested one engaged in a vow, or one suffering from a disease of the mouth". 'Engaged in a vow', i. e. a vow of consoicing the rice.

Nārada: "The enauchs, persons devoid of virility, meo oppressed with grief, as also mnares, aged persons and the diseased, one should always test in the *Balance*. Not for those suffering from a disease shall the purification be by *Water*, nor shall the *Poison* be for those suffering from hiliousness; for the lepers, the hliad, and those with distorted aiale, the performance of the (ordeal by) fire is not ordained (233). Nor should be immersed the women<sup>2</sup> and the infants by those well-verses in the acieace of religion; as also those who are diseased, or aged, also those mea who are weak (313). Persons devoid of caergy, those afflicted by a disease, and those who are suffering shouold one immeras in water; immediately they are immersed they might die, these mea with a tender vitality (314). Even if these happen to be involved in a charge for a heinous offence, one shouold never immerse them in water; nor also should they be made to carry fire, nor should they be tested by poison (315)".

Pitāmaha: "To the drakkard, the voluptuous, as also to the rogues, the *Aśa* should not be offered by wise men; as also to those who are unbelieveva by nature". Kātyāyana<sup>3</sup>: "Upon a conflict with the usage of the coontry and the time, one shouold administer as may be proper relatively; an ordeal may be got performed by another<sup>4</sup>; this is the rule on a conflict". 'On a conflict' i. e. when the accused is incompetent. Nārada: "For those who have entered upon a vow; those who are extremely troubled, those suffering from a disease, as also for those who are engaged in austerities, and for women, there cannot be an ordeal, if the rules of law are to be observed". Kātyāyana<sup>5</sup>: "For those who are tainted with great sins, and especially for the

1. Kātyāyana, Verse, 424.

2. Ch. I. 255, 313, 314, 315.

3. Verse, 436.

4. i. e. by one nominated by the accused, when he is not himself able to do the ordeal, but is anxious for an exoneratian.

5. Verses, 431, 432.

unbelievers, for these an ordeal must not be given, and to one who is habitually addicted to sins; so says Bhṛgu (431). In the case of those evil persons for whom ordeals are prohibited, these should with effort be tested through good men; the king should not pronounce defeat upon one against whom an accusation has been laid (432). (98).

5.

By regard to particular class &c., the Author states particular ordeals

Yājñavalkya, Verse 98.

For a Śūdra, a special rule has been mentioned by Nārada: "For a Brāhmaṇa should be given the Balance; for a Kṣatriya Fire (the consumer of oblations); for a Vaisya should be given Water; and for a Śūdra, however, Poison only. Generally for all, the Kośa has been declared by the wise; excepting the Poison for a Brāhmaṇa, or for all has been stated the Balance".

10

As to the text "for women, however, no ordeal can there be", by which an ordeal has been forbidden for women, that, however, has no reference to any other.—"For those involved in great sins, and in particular for the unbelievers, never should a king intent on the rules of Dharma administer an ordeal. For good people appointed by these very men an ordeal may be proper". (98).

15

It has been said<sup>2</sup> (above) that "these ordeals are ordained in the case of serious charges." The Author now mentions that which makes for seriousness in a complaint

Yājñavalkya, Verse 99 (1).

Never until (the subject matter of the dispute is below) a thousand should (the ordeal of) the plough, nor the (ordeal of) poison, nor also of the balance (be allowed).

25

Mitikshāra:—While the subject-matter of the suit is less than a thousand Pāṇas, the ordeals of the plough, the poison, or of the balance should not be caused to be made, and even the common ordeal of water also, as has been said<sup>3</sup>: "The ordeals beginning with

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1. The reading here is नामिशराते जप्तेऽनुपः. Elsewhere the reading is नामिशराते जप्तेऽनुपः. See Kane Verse 432.

2. Verse 95 p. 910.

3. By Pitāmaha.

the balance and ending with that of the poison should be administered in heavy cases." Here the non-mention of the (ordeal of) *kos'a* is accountable by its mention even in connection with petty complaints, in the text: "The (ordeal of) *kos'a* may be offered even in a petty case." The meaning is that these four ordeals are allowed only in cases for the amount of a thousand *Panas* or above, and not below.

10 An objection:—Indeed the ordeals of fire &c have been specified by Pitāmaha even for (suits for) less, viz.: "In the case of a thousand, the (ordeal of) balance should be offered, so the iron<sup>2</sup> (ordeal) should be given for the half of a thousand; for the half of a half, however, the (ordeal of) water, and for the half of that, the (ordeal of) poison has been prescribed."

The Answer:—True. In such a case (however) the rule is to be thus interpreted and applied: The text of Pitāmaha is (to be accepted as) applicable to such properties by the deprivation of which there occurs a degradation, while the text of the Lord of the Yogis<sup>3</sup> is to be taken as referring to other (kinds of) property. And, moreover, both these texts apply to cases of thefts and violent crimes. In the case of concealment, however, a special rule has been pointed out by Kātyāyana<sup>4</sup> thus:—"In cases where there is a denial of payment, in such a case the quantity or amount (of the property) should be determined. In cases of theft and assault an ordeal should be administered even if the subject-matter be a trifle. Having ascertained the quantity of the property of whichsoever kind it may be, its equivalent in gold should be determined, and then with a gold measure the ordeal should be administered. Having (thus) ascertained the amount (equivalent) in gold coins, for the loss of a hundred, (the ordeal of) poison has been ordained; for the loss of eighty, however, (the ordeal of) fire certainly should be offered. In the case of a loss of sixty, the (ordeal of) water should be given; while for forty the (ordeal of) balance. For a loss of twenty or ten, however, (the ordeal of) drinking of *kos'a* is ordained. The (ordeal of) rice is ordained for a loss of five and more or the half of its half. For its half or the half of this half, however, the heads of sons or the wife

1. Of Pitāmaha.

2. i.e. the fire.

3. i.e. Yājñavalkya.

4. Verses 416-421.

should be touched. For the loss of a half of this or of its half again, however, the means<sup>1</sup> of proof resorted to in this world have been ordained. A king thus discriminating does not fail in his *religious* or *secular* duties (*Dharma and Artha*)."

\* Page 61.

5

In the passage<sup>2</sup> "Having ascertained the amount in gold coins," the term *gold* (coins) is indicative of the measure already mentioned above<sup>3</sup> viz. "Sixteen Māshas make a gold coin." Moreover, the word "loss" here is indicative of a "concealment." In the text<sup>4</sup> "Never until the subject matter is below a thousand should the plough be allowed &c." the thousand of a copper pāṇa should be understood.

10

It may be said—Indeed these ordeals have been mentioned in cases of sedition and other crimes, then what of the text<sup>5</sup> "never until the subject-matter is below a thousand should the plough be allowed"? Anticipating this, the Author says

15

### Yājñavalkya, Verse 99 (2).

But in the cases of offences affecting the king, and in serious charges, the parties should always undergo an ordeal after having purified themselves.

20

Mitāksharā :—In cases of sedition, as also in accusations of heinous crimes, always, without regard to the quantity or amount, (the parties) should perform ordeals after having purified themselves by fasting &c.

25

Similarly a special (rule as to) the place has also been mentioned by Nārada<sup>6</sup>: "Before the gates of the Court or of the Royal palace, or in sight of a temple, or in a cross-road, must be placed, firmly into the earth, after having been covered with perfumes, garlands and unguents." 'Must be placed' i.e. the

1. द्विषेषः इष्टः as opposed to द्विषयः. Worldly or human.

2. p. 928 II. 22-25. 3. Āchāra Adhyaya Verse 363 p. 623 I. 3.

4. Of Yājñavalkya 99 (1). p. 927.

5. Ch. I. 205, 266.

balance. The details have been mentioned by Kātyāyana<sup>1</sup>: "The trial of men accused of heinous crimes should be caused (by an ordeal) before the seat of the God Indra. Of those who are accused of having attempted sedition, the trial should be ordered to be held before the gate of the royal palace. For those born of a connection between a woman of a higher and a man of a lower class, the ordeal should be administered at a place where the roads cross. In the case of others than these, the ordeal should be offered in the court house. This is what the wise think. Of the untouchables, or persons belonging to the basest class, of the slaves, of the *mlechchhas*, of persons guilty of heinous crimes, and of persons born of a *Pratiloma*<sup>2</sup> connection the trial shall never be before the king. In case of doubts, the ordeals known as ordained in each case should respectively be administered."

15 Here end the Rules of Procedure about the Ordeals.

#### Viramitrodaya.

By regard to the amount of money in particular cases, the Author states particular ordeals

#### Yajñavalkya, Verse 99.

20 In a dispute for a debt &c. for less than a thousand *pāras*, not the plough, nor the poison, nor either the balance should one administer.

*Nṛpārtheśhu*, 'in cases of offences against the king' i. e. in charges of treason against the king; *s'uchayāḥ*, 'after having purified themselves' i. e. when they have cleansed themselves by bathing, &c., 30 an ordeal like the plough, &c., *waheyūḥ*, 'they should undergo'.

By the use of the word *tathā*, 'also', is added that water should not be administered. By the word *cha*, 'and', are included the *sāhasas*. So also Vīshṇu: "Now about the performance (of ordeals). In cases of treason against the king, and in *sāhasas*, according to the option. 35 In cases of deposits, and thefts, the amount (involved) is the measure."

1. Verse, 434.

2. A *Pratiloma* connection is a union between a man of a lower, with a woman of a higher class, its converse is called the *Anuloma*; see Yājñ. Achara IV 90-96. pp. 241-261. above.

3. Ch. IX. 1-3.

Yajñavalkya ]  
Verse 90.

*Samayah*, 'covenant', i.e. the ordeal, 'according to the option', i.e. in pursuance of the king's wish.

Kātyāyana<sup>1</sup>: "Where a gift is denied falsely, there the amount<sup>2</sup> (involved) should be determined. In the case of theft and the *sahasas*, an ordeal should be given even for small amounts." "Even for small, &c., the meaning is that in those petty cases of debts, &c., where an ordeal does not exist, even for these amounts in cases of a theft and *sahasa*, an ordeal is prescribed."

Brhaspati<sup>3</sup>: "The (ordeal by) *Poison*, when a thousand have been stolen; when a quarter less, the *fire*, (ordeal); when less by a third, the (ordeal by) *water*, and when a half is stolen, the *balance* should always be given. When however the accusation is for a four hundred, the heated *masha* should be given; for a three hundred, the *rice* should be given, and the *kośa* for a half of it. When a hundred has been stolen or falsely denied, the trial should be by the (ordeal of) *Dharma*. For a cow-thief should be given by the councillors the purification by (the ordeal of) plough. These figures are in the case of persons of lowest degree; for (persons of) the middling (kind) has been stated to be the double; and four times for the highest should be determined and administered by the Judges."<sup>4</sup>

Vishnu<sup>5</sup>: "In all money-transactions gold shall be regarded as the standard of value (4)....." Similarly, if it be less by a half of gold (*Krishnala*), the *kośa* should be offered to a *Sudra*. For more than that, the *Balance*, *Fire*, *Water* or *Poison*, according to the value. In one of double value the ordeal of oath as described before for a *Vaiśya*; for treble value for one of the kingly tribe, and for the quadruple value for a *Brahmāna*. Not for a *Brahmāna* should the *kośa* be offered, excepting for creating confidence as part of an agreement to be performed in future (16). In the place of a *kośa* a *Brahmāna* may be made to take an oath only with (a clod of) earth dug up by a plough (17). In the case of a person with a previous conviction, even in a matter of a small value, one of the ordeals alone should be administered (18). For one whose good character is well known among good men, not even in cases of large values. (19)." "Excepting, &c."—Where an agreement has been made viz.: "We all jointly shall do this", excepting

1. Verse 416.

2. Meaning thereby that the question whether an ordeal should be given and if so which variety, would be determined after ascertaining the amount involved.

3. Ch. X. 9-12.

4. Ch. IX. 4; 10-19.

5. in Sutra 16 above.

that. Thence, however, even for Brāhmaṇas, the *Kos'a* may be given. Plough i. e. the furrow of an anchor.

Kṛtyāyana<sup>1</sup>: "After knowing the extent of all things, gold should be fixed as the standard; and the ordsal should be presented according to the gold standard. For a loss which leaves a residue less by a quarter, the *Poison* and the *Fire* is observed there; the *Water*, where the loss is less by a third part; for half of a hundred, the *Balance* has been stated; the drinking of the *Kos'a* water, for its half, or for tenth, fifth, a seventh, or for half of that, the rice, and for half of that 10 the heated *māṣa*." 'Of a hundred of goldless than by a quarter', i. e., seventy-five gold coins; 'less by a third part', i. e. a third part of a hundred gold; 'its half' i. e. half of a hundred, 'for tenth, fifth, seventh, i. e. for a tenth part of a hundred, fifth part, or a seventh part,—the drinking of the *Kos'a* water. This is the meaning. Here, 15 moreover, the small proportion is in regard to the lower classes. Vṛdha Manu: "Having ascertained the quantity in gold, for the loss of a hundred, the *Poison* has been stated; for the loss of eighty, however, should be given the *Fire*; when the loss is of sixty (gold), *Water* should be administered; for a forty, shall be the *Balance*. For 20 the loss of thirty or of ten, Bṛhaspati prescribes the drinking of the *Kos'a*; for the loss of five, or a half or of its half, the *Rice*". 'Thirty &c.' i. e. for the loss of thirty or for the loss of ten. 'Five' &c. of the half a five or of its half or for the loss of one, the drinking of the *Kos'a* water. This is the meaning.

25 These texts are in reference to debts &c. as also in regard to things given away. The text of the Author, however, is in reference to one who commits theft. Thus there is no contradiction, so they say.

Here end the Rules of Procedure for Ordeals.

### S'ūlapāṇī.

#### Yājñavalkya, Verse 99.

In an accusation for a thousand only shall be an ordeal by fire &c. *Nṛpārtheśhu*, 'in regard to king', i. e. in charges of treason against the king &c., and also in accusations for heinous sins, after being purified by a bath &c., they should carry *fire*. Bṛhaspati<sup>2</sup>: "Poison, when a thousand 35 has been stolen; for a quarter less, the *fire*; when less by a third, the *water*; and for a half, the *balance*, should always be given. When the

accusation is for a four hundred, shouold be given the heated māsha; for a three hundred, the rice should be given, and the kōsa for a half of it; when a hundred is stolen or also falsely denied, the purification by Dharma should be administered. For a cow-thief should be given by the councillors the (ordeal of) plough by all efforts. These figures are for the lowest; for the middling, the double has been stated; and four times for the best should he fixed by the judges". "For the lowest" i.e. by caste, occupation and qualification. (99).

Thus ends the Chapter on the Procedure for Ordeals.

Having thus stated the rules of procedure applicable to 10 all kinds of ordeals, the Author now mentions the process of administering the ordeals of the balance and othera

Yājñavalkya, Verses 100, 101, 102.

When men versed in holding a balance have seated a party therein, weighed him against an equal weight, 15 marked a line, and caused him to descend, (100)

"O balance, thou art the abode of truth and wert created by the gods in the olden times, therefore, O auspicious one, speak the truth, free me from suspicion. (101).

O, mother, if it be that I am the sinner then carry 20 me down. If I am pure, carry me upwards". Thus should he invoke the balance, (102).

Mitakṣhārā :—Those who know the holding, dhāraṇam, i.e. the weighing of a balance, i.e. the goldsmiths and others, by these pratimānena, by 25 means of another measure, e.g. clay &c. sami-bhūtah, having been weighed against an equal weight i.e. having been made equal (in weight), and, tulāmasritah, haring been seated in the balance, i.e. seated intn it, the party, i.e. either the defendant or the complainant, rekham kṛtwā, haring drawn the line, determining the ordeal, i.e. having, by means of a white chalk, drawn a mark round that side of the balance wherein he was seated in the position 30 of an equilibrium, and, avatīritah, having been made to descend,

tulāmabhimantrayet, he should invoke the balance, i. e. offer a prayer to the balance by the following mantra, viz.—“O balance, thou art the seat of truth, (and) purā, in olden times, thou wert, devaiḥ, by the gods, i. e. by the Hiranyagarbha, and others, vinirmitah,  
 5 created, i. e. manufactured. Tat, therefore, i. e. for that reason, wada, speak, i. e. point out, satyam, the truth, i. e. the real nature of the matter in dispute. Oh, kalyāṇī, auspicious, i. e. good one, sans'ayānmām vimochaya, free me from this suspicion. Mātar yadyaham pāpakṛt, Oh mother if it be that I am the sinner,  
 10 i.e. am telling an untruth, tato mām twam adho naya, then you should carry me down. If, however, s'uddhāḥ, I am pure, i. e. am telling the truth, mām urdhvam gamaya, then carry me upwards.”

The form of prayer for the Chief Judge for addressing the balance has been laid down in other *Smṛtis*. The present *mantra*,  
 15 however, is for him who performs the ordeal. The test of a success or a defeat is, moreover, obtainable as being indicated by the *mantra* itself, and so has not been mentioned separately.

The construction of the balance, however, having for its object the seating of the party (with it), has been lucidly described by  
 20 Pitāmaha, Nārada and others thus:—

“The wise should construct a balance after saluting the guardian deities of the quarters, and after cutting down with the incantation of the hymns a sacred tree from which a sacrificial post is obtained. The hymn to be repeated softly at the time of cutting  
 25 the tree is the one addressed to the God Soma<sup>1</sup>. A quadrangular balance should be made which should also be strong and straight. Rigs should be fastened at three places and with a purpose. The balance should be four *Hastas* in length, and the two posts also should be of equal measure. The space intervening between the two, however,  
 30 should be two *Hastas* or half a *hasta* more; and the two (remaining) *Hastas* of both the posts should be dug into the earth. Moreover, two arches should be created in the rear of both the posts, and (these) should always be higher by ten *Angulas* than the balance. Then,

1. Thus : शोमो षट्कु गौतमः शापदेहु जो विनियोगः । “सोमो षट् .....”.

\* Page 62.

two suspenders of clay, should be prepared, hanging downwards from the arches suspended by ropes and touching the head of the balance. A firm balance facing towards the east should be erected on a holy spot, two scales should be fastened to the sides of both (the posts), and the (blades of the) *darbha* grass should be placed in both the seats with their ends turned towards the East. In the scale towards the west, should be weighed the parties (performing the ordeal), and in the other pure clay. There (*i. e.* on this side) he should place a basket and fill it with bricks, stones, and sand." 5

Here, however, there is an option as to the selection of clay, 10  
bricks, stones, or sand.

" Persons should be appointed as judges who are well-versed in the weighing of balances viz.: the grocers, the goldsmiths, as also the bronze-smiths. The Judges should always make the balance even and in a line with the suspender, and the wise should place water over the balance; that balance should be considered as even wherein the water does not move." 15

" Having first weighed the man and after having got him down, the balance should always be kept adorned with bunting and flags, and then one knowing the *mantras* should invoke the gods as described in the following procedure: Thereafter the Chief Judge with the flourish of music, with his face towards the East, and with folded hands bearing fragrant odours, flowers, and besmearings, should repeat the following (prayer): "O God Dharma, come, O, come, and be seated in this ordeal accompanied by the Guardian Deities of the quarters and by the groups of the Vasus, Ādityas and Maruts." 20

" After having invoked the God Dharm<sup>1</sup> (to be seated) in the balance, thereafter the (other) parts should be distributed (as follows): Having seated Indra in the East, and the Lord of the Dead in the South, Varuṇa in the portion towards the West, and Kuhera in the North, he should seat Agni and other Guardian Deities of the quarter in the parts in the corners." 25

" Indra has the yellow colour, Yama the blue, and the colour of Varuṇa is like that of *sphatika* stone. Kubera, moreover, has the

1. Law or the Deity presiding the Law.

lustre of gold, and the god of Fire also possesses the golden hue. Similarly the Nirṛtiḥ is known to be blue and Wāyā (the god of wind) smoky. Isāuoa is, however, red. Thus shouold all these be contemplated in the order (mentioned above). ”

5 “ A wise man should worship the Vasus on the southern side of Indra. Dhārī, Dhruva, and similarly Soma, Āpa, Anila, Nala, Pratyūṣha, and Prahhāta, are known as the eight Vasus.”

10 “ Similarly the group of the Adityas should be placed between the Lord of the Gods and the Isāuoa. Dhātū, Aryamā, and Mitra, also, Varunāḥ, Apśuḥ and Bhagavāḥ, likewise Iodra, Vivaswān, and Pūshu and Parjanya known as the tenth; then Twashtā and then Viṣhṇu not the last though born of the last; these are the twelve Adityas described by their names.”

15 “ The point towards the west of Agoi is known to be the place for the Rudras, Virahhadra, S’ambhuḥ, Girīśa of great fame, Ajaikapād, Ahir-bhudnya, Piṇḍiki the never-defeated; so also Bhuvanādhis’varāḥ, Kapāli, the lord of the people, Sthāṇuḥ, Bhavaḥ and Bhagavān are known to be the eleven Rudras.”

50 “ Between the Lord of the dead and Rakṣha a place should be assigned for the Mother Deities viz.: Brāhmaṇi, Māhes’wari, and also Vaishṇavi, Vārāhi, Māhendri, and Chāmunda accompanied by the hands of the followers.”

25 “ The points to the north of Niṛtti is known to be the place for Ganes’ā, and the place for the Maruts is said to be at the northern side of Varuṇa; Gagatāḥ, Spars’ānah, Vāyoh, Anilāḥ, and also Mārutāḥ, Prāṇāḥ, and the two viz., Prāṇes’ā and Jīva are known as the eight Maruts. A wise man shouold invoke the goddess Dorgā at the northern side of the balance.”

30 “ The worship of these deities is however known to be by (repeating) their own names. Having offered worship to the God-Dharma<sup>2</sup> commencing with the arghya and ending with decorations

1. i. e. the last order, or the Rudras cf. “ एकादशस्तथा वृष्णा द्वाषप्ती विष्णुरुद्रपते । यत्पर्यजस्तु सर्वेषामाद्यानां तुष्णिष्ठः ॥ पृष्ठापाते I. 65, 16.

2. The principal deity प्रधानवैदेयता in this ritual.

&c.; thereafter a similar worship should be offered to the other<sup>1</sup> deities viz. commencing with the *arghya* and ending with decorations the service should commence with *gandha* (sandal-paste) and end with *naivedya*."

Here, moreover, having duly constructed a balance adorned with hunting and flags, and having invoked thereon the God Dharma with the hymn—"Come, O come &c.", and with the formula, "I offer this Arghya to Dharma; how to him, &c." having offered *arghya*, *pādya*

\*Page 63. 10 and water, *madhuparka* and water again, a bath, clothes, the sacred thread and the water ending with the offer of the crown, the bracelets and other ornaments, and then to the other deities commencing with the god Indra and ending with the goddess Durgā, with the repetition of the *om* (३) at the beginning<sup>2</sup> of the name of each deity and with the dative case at the end, and having offered worship to them commencing with the *arghya* and ending with decorations, he should then offer to the god Dharma the *gandha* (sandal paste), flowers, burnt perfumes, light, and the *Naivedya*, and then should offer as before to the god Indra and others the worship commencing with the *gandha*. The sandal and flowers for the worship of the balance should be (of a) red (colour), as says Nārada: "With the red sandal paste, red flowers, curdled milk, fried puddings, the rice grains &c. first (he) shouls offer worship &c. to the balance and then he should do honour to the respectable (people present thers)." Of Indra and other gods the worship may be (offered) with red or other flowers such as are available (at this time), as no special rule has been mentioned. Thus should be the order of worship.

All this, moreover, the Chief Judge should do. As has been said<sup>3</sup>: "Then the Chief Judge, a Brāhmaṇa, who has completely mastered the Vedas and the Vedāngas, who is accomplished by his learning as well as his conduct, whose mind is calm, and who is free from feelings of jealousy, who is the essence of truthfulness, who is pure, and who is watchful and devoted to the welfare of all being".

1. i.e. the secondary or subordinate deities अपूर्वाः In every performance there is a प्रधानदेवता the principal Deity and the rest are accessories, अपूर्वाः

2. This यज्ञादिष्टः &c.

3. By Nārada.

who has observed a fast and whn after cleaning his teeth has worn a clean cloth, should do worship to all the deities as prescribed by the ordinances." Moreover, a sacrifice should be offered in the *Laukika* fire by the four *Rtujas* in the four quarters, as is said<sup>1</sup>: "Similarly a sacrifice should be offered in the four quarters by those who have completely mastered the *Vedas*, by means of ghee, and holy articles of sacrifice, and with the *samidhs* which are the (usual) means of a sacrifice, by repeating the *Savitri* and the *Prajnya* mantras with the words *sudhā* at the end of each." The meaning is that each of the three articles viz. the *samidh*, ghee and the rice should be offered 108 times each with the repetition of the *gâyatri* with the *pranava* at its commencement and again with the addition of the *pranava* at the end after the offer of the oblations with the words *sudhā*.

Thus having performed the worship of the deities with the oblations as the last, thereafter, having written on a leaf the subject-matter of the dispute, it should be placed on the head of the person wishing to perform the ordeal. As has been said<sup>2</sup>: "Having written on a leaflet, whatever is the subject-matter of the accusation, it should be placed on the head with (the repetition) of this mantra." The Mantra, moreover, is this: "The sun, and the moon, the fire, the wind, the sky, the earth, the water, the heart, the god Yama, the day as well as the night, and the two evenings, and Dharma, each one knows the action of men." Moreover, the part of the ceremonial commencing with the invocation of the Dharma and ending with the placing of the leaf on the head, is common to all the ordeals, as has been said: "The whole of this ceremonial preceding the *Mantra* should be observed in all the ordeals; similarly should be observed the invocation of gods."

Thereafter the chief Judge should invoke the balance, *vide* the text<sup>3</sup> "One knowing the *Sâstra* should also invoke the balance with this formula and the *mantras* also have been indicated viz.: "O balance, you have been created by the Creator for testing the sinful. From the letter *dha* (in your name) you are the incarnation of Dharma; and since from the letter *sa* in your name you determine n

1. By Pitimaha.

2. By Nârada.

3. By Pitimaha.

guilty individual when he is weighed (in you), therefore you are known as the *Dhāta*. You know the sins as well as the good deeds of all beings. O God, you alone know those things which mortals do not know. This man who has been accused in a judicial proceeding wishes to establish his innocence; therefore, O Lord, you should be pleased to save him from this suspicion according to the rules of Dharma." The person wishing for an acquittal however should invoke the balance with the *mantra* given above viz. "O balance &c." Thereafter the chief Judge shall place in the balance the person wishing to perform the ordeal, and having placed on his head the leaf, and after seating him in his proper place; vide the text: "Should again be seated in it, after having placed the document on him." And while so seated he should be made to sit in that condition for an interval of five *rīṇādis*<sup>1</sup>; one knowing the science of astronomy should determine this interval of time, vide the text<sup>2</sup>: "One knowing astronomy and who is the best of Brāhmaṇas should determine the interval of time; the interval of five *rīṇādis* should be determined by those who are experts in determining time. The interval required for pronouncing ten long letters is known as a *prāṇa*; six *prāṇas* make a *rīṇādi*. It has also been said: "(the interval required for pronouncing) ten long letters is called a *prāṇa*, six *prāṇas* make a *rīṇādi*, sixty of these a *ghāti*, and of sixty *ghātis* is said to be made in a day and night." With 30<sup>3</sup> days is made a month.

During this interval, moreover, pure men should be appointed by the king for determining the acquittal or non-acquittal, and these will declare the acquittal or non-acquittal as has been said by Pitāmaha: "Among the umpires the best Brāhmaṇas who would depose only such as has been seen by them, who are wise, pure, and who are not covetous should be appointed by the king. Umpires

1. रीणादि—see further on, a measure of time equal to  $\frac{1}{60}$ th part of a *Ghati*—24 Seconds.

2. वृत्तिरीणादि—i.e. the sky-0, & अर्ध—3; and according to the general rule मुक्तानि वाचो ग्रन्थः; this can be written as 30.

3. The method by which this figure of thirty is arrived at, is explained above.

of (such a) high character will then inform the king of (his) innocence or non-innocence.

The condition for determining the innocence or non-innocence

5      " Page 64.      has, moreover, been laid down<sup>1</sup> thus: "If, on being weighed he rises, he is undoubtedly innocent. If his weight remains the same as before, or if he goes down, he cannot be acquitted."

As to what has been said by Pitumaha:—"One who will show so equal weight is guilty to a small extent, while he whose guilt is large, goes down."—there, although the smallness or the largeness of the matter under complaint cannot be determined by an ordeal,<sup>2</sup> still the smallness or largeness of the punishment would be determined thereby—viz the (punishment) would be small if the act is done only once or unintentionally, while it would be great if the act is repeated more than once, or has been committed intentionally.

When, however, without any austensible cause, the scales &c. burst or break, even then, there is a non-acquittal vide the text:<sup>3</sup> "Should the base burst, or the scales break, or the beams or the hooks split, or the strings burst, or the transverse beam break, a non-acquittal should similarly be declared (as stated before)".

Kakṣha is the base of the balance; the two Karkatas are the two iron-hooks slightly bent, fixed at the two ends of the balance to support the scales and resembling the thorns of a crab (गव्य). The Akṣha is the piece of the beam to be placed on the two base-pillars, for holding the balance. When, however, these break on account of a cause which is ascertainable, then he should be placed again, vide the text: "In the case when the scales &c. burst or break, the man should again be placed."

1. By Nārada. I. 283.

2. i.e. the same having already been stated in the leaf placed on the man's head.

3. Nārada. I. 284. The text actually to be found in the edition of Dr. Jolly is, however, quite the opposite of this: the last line thereto being गव्यः प्राप्तेष्विद्युत्—“shall pronounce a formal declaration of his innocence.” Kātyāyana, suggests a re-trial, See Verse 440.

Thereafter "The king abond please the *Ricikṣ*<sup>1</sup>, *Purohitas*, and the *Achārya* by means of *dakṣinās*. A king causing these to be made in this manner, after having enjoyed (all) the pleasurea of enjoyment, obtaina great reputation and is entitled in the end to absoltion." 5

When, however, the king wishes to maintain in the same condition and permanently the balance na described above, then he should build a house for it in order to protect it from damage from the crows &c. *vide* the text<sup>2</sup>: "A balance-house should be erected which should have a wide space, whibh shonld be higb, and be white-washed, and itsa should he so situated where the balance (when placed) would not be damaged by dogs, or the *chāndālas*, or crows. There also he should cause to be (invoked and) seated in several quarters the guardian deities of the quarters and other deities, and shoudl cause their worship to be made there at the three changing periods of the day by means of sandal-paste, flowers, and (other) unctious. He should have it protected by doors, store seeds thereio, and have it watched by the guards, should cause earth, water, and fire to hs placed therein, and should not allow it to remain unatteode<sup>3</sup>". Seeds i. e. of barley, rice &c. 10 15 20

Here ends the Ordeal by Balance.

### Viramitrodaya

Thus, having stated the procedure applicable to all ordeals, now the Author states upto tha en of the Chapter the special rules of Procedure for each of the ordeals viz. Balance and the rest. 25

Yajñavalkya, Verses 100, 101, 102.

Those who know the holding i. e. the balaoing of the scales such as the goldsmiths &c. by these, *Lekhyam*, 'a.writiog' such es 'I did not commit theft' and of a lika nature, having placed on tha head, and

1. A *Ricik* is the head-priest at a sacrifice ; a *Purohita* is the head family priest; and an *Achārya* is one who imparts instruction in the Vedic lcre. [ See Yajn.: I. 34 35 pp. 126-127 above ( Vol. I; Part I); Manu. II. 140-143. ]

2. Of *Pitāmaha*.

3. i. e. the place should not be left deserted ; a guard should always be placed to protect the machinery and to help its being kept in tact.

4. रेत् एवि. The *Mitakshara* reads रेतः एवा, and *Sūlapāṇi* etc prefer to have the same reading. *Vitrāpa* reads रेतः एवा, but .interprets it similarly as the *Mitakshara*.

as against a counterpoise, equalised and so placed in the balance, the person complained against i. e. the performer of the ordeal, and having been made to descend into it, with the invocation, "(free) me &c." he should address the balance, i. e. on the day of his being seated, he should pray with this *mantra*<sup>1</sup>.

On the second day, moreover, if the person balanced increases i. e. goes higher up the equipnised weight in the other scale, then he is (declared to be) exonerated i. e. is clearly found to be not amenable to the accusation i. e. there would be no longer any suspicion of a charge; if, however, he is found to be equal or lower than the counterpoise, then the performer of the ordeal shall not be regarded as exonerated; he shall be deemed to have been defeated. This verse viz "Weighed &c." is stated in the *Mitāksharā* in the name of *Pitāmaha*.

The explanation of the *mantra* is, moreover, as follows:—  
15. "O balance, you are the abode i. e. the place, of truth; by the gods i. e. by Brāhma &c. formerly i. e. in the first creation, you were created i. e. produced; therefore i. e. for that reason, O auspicious one, speak i. e. point out the truth, i. e. according to facts; and from this suspicion free me."

20. "O mother, if I am a sinner i. e. am speaking an untruth, then i. e. in that case lead me down; if I am pure i. e. am speaking the truth, then carry me upwards."

Here, after the manner of the (*mahāddna*) 'Prime donation' of a Weightment Deity (*Tula-purusha*)<sup>2</sup> including a little more in particular matters in the balance so prepared on the day of the weighment,<sup>3</sup> after the writing of the statement solemnly declaring the absence of any cause for the charge against him, and after writing the *mantra*, "The Sun, the Moon, the Fire, the Wind, the Sky, the Earth, the

1. *Mitramiśra* reads after verse 100 the following verse viz.: "तुलिते यदि

पूर्व विशुद्धः द्वादशं संशयः । समो च द्विषयानो चान विशुद्धो मोक्षः ॥" which he says that the author of the *Mitāksharā*, has assigned to *Pitāmaha*, while *Vishvārūpa* cites it as a text of *Nārada*, in which *Smyti* also it is stated at Ch. I. 283. As a matter of fact, however, *Vijñanīśvara* does not mention any writer; he simply says, 'it is stated'. The *Smytichandrika* also quotes it as a *Nārada* text p. 110: l. 3.

Yājñavalkya  
Verses 100-102.]

Water, the heart, and the God Yama, the day, and also the night, and the two evenings, each one knows the actions of men and the Dharma"; and after placing that document on his head, the Chief Judge should cause the performer of the ordeal in the balance after it is counterpoised, with the repetition of the invocation *mantra*; and on the next day after the completion of the daily performances, with face towards the East with folded hands, invoke the Gods in the balance with the *mantra* as set out before, viz., "Come, O come thou the revered Dharma". Thereafter i.e. should perform the worship of the Gods as stated by Pitāmaha, as follows: [Here follow the same verses as are set out above in the *Mitāksharā* at p. 935 l. 29. as far as p. 937 l. 4.]

Then should be offered by four Rtvike versed in the Vedas oblations, each of the *samidhs*, ghee, and cooked rice, commencing with the *Prāṇa*, the *Gāyatri* and ending with the *Prapata* and the word *sudha*, on the four sides of the balance in the *Laukika* fire. Then the Chief Judge should address the Balance—There the mantras are these (see above *Mitāksharā*, p. 938, l. 31 to p. 939 l. 7). Then the Chief Judge should place the performer of the ordeal with the written document on his head, on the balance for an interval of five *Vindhis*. A *Vinādi* is defined thus: "Ten long letters make a *pr̄d̄na*, and six *pr̄d̄nas*, make a *vind̄ika*". Thereafter one who goes up, the king's messengers should declare him to be innocent and exonerated. This is in short the substance. Here the measurement and the word for the balance and other details have not been stated out of fear of prolixity. These should be sought for in the statement for *Mahādāna*. (100-104).

### Sūlapāṇi.

Yājñavalkya, Verses 100, 101, 102.

Men conversant with holding the balance such as the grocers &c., after having equipoised the person complained against by means of stones and such like counterpoise, and when thus equipoised by the counterpoise, should mark with a white line the scale adjusted by the fall of strings, and after the person is made to get into it, he should repeat this Mantra.

Nārada<sup>1</sup> :- "After having well fastened the two scales by the hooks of the beam, he should place the man in one scale and the stone in the other; should place the person in the northern scale and the stone

1. 'विनाद' is the reading in *Viramitrodaya* for 'विनाद' in the *Mitāksharā*.

2. Ch. I. 271-272.

in the other, in that towards the south; there he should fix a basket with bricks, sand, grains, and balls".

The meaning is that he should address the scale with the mantra. "Thou O, Balance, you art the node of truth". Here the success or defeat should be inferred from the indication of the balance going up or down. So Pitāmaha : "When weighed if he is (found to have) increased, he becomes exonerated according to (Dharma) law. If he goes down, he is not exonerated according to some; if equal, he is innocent. One with a small guilt is equal; but one whose guilt is great goes, down. By 5 the preponderance of Dharma and its power, one who excels (in weight) is declared pure". By saying "according to some", is meant that he should be examined again. So Brhaspati : "If the person complained against when weighed in a balance goes down, he shall be declared guilty; if, however, he remains equal in level, he may be weighed again; 10 15 one who goes up shall be declared to be successful". Vyāsa : "One who goes down is not declared to be innocent; one who goes up is declared pure; one who is level is also not considered to be pure; this is the rule about purification". "Should the scales break or the beam or the bolts break, or the strings burst, or the transverse beam split, the king 20 shall administer the ordeal again". By the expression 'he is not declared innocent' is meant that he shall not be deemed to have succeeded, not that he is defeated". (102).

Thus ends the Chapter regarding the Balance.

### The Ordeal by Fire.

Now the Author describes the *Ordeal by Fire* coming up in its turn

Yājñavalkya, Verse 103.

After the hands of one, by whom rice paddy have been rubbed, have been marked, seven leaves of Asvattha<sup>2</sup> 25 should be placed on them, and as many (rounds of) threads should be coiled around.

1. Ch. X. 19.

2. Cf. Narada I. 284. According to Narada, however, a formal pronunciation of the innocence is recommended, while according to this text a re-trial is ordered.

3. Known as Ficus Religiosa.

Mitāksharā :—With the general rules of procedure laid down for ordeals having been complied with, and after the ceremonial commencing with the invocation of the God Dharma and ending with the placing of the document on the head, as described in the ordeal by balance has been gone through, this special rule (of procedure) is laid down in the case of the ordeal by fire. 5

Vimṛditavrihi, (one) by whom rice paddy have been rubbed, i.e. one by whom has been rubbed i. e. pressed, the rice paddy with both (the palms of) his hands, such a one is called vimṛditavrihi. After the karaū, hands, of him lakshayitwā, have been marked, i. e. marked, with the juice of red lac &c. those parts hearing a spot, a curl, a scar, or a corn &c. as says Nārada<sup>1</sup>: "All sores or scars on his hands should be marked with signs<sup>2</sup>." Thereafter Saptāśvatthasya parṇāni, seven leaves of Asvattha, nyaset, should be placed, on the two hands joined together, vide the text<sup>3</sup>: "Having covered his two hands joined together with seven Asvattha leaves of equal size." These, moreover, together with the hands should be veshtayet, coiled round, with thread, as many times as there are the Asvattha leaves i. e. the meaning is that it should be coiled in seven rounds. 10

The threads, moreover, should be seven and white, vide the text of Nārada: "The two hands should be covered round by seven strings of white thread." Then seven leaves of S'nmī, also seven blades of the Dūrvā<sup>4</sup> grass, and the rice nkshatas, as also rice besmeared with curds, (all these) should be spread over the asvatthān leaves, vide the text: "He should spread seven pippala leaves, the s'nmī leaves, as also the rice, seven blades of dūrvā grass, and rice besmeared with curds." Also should the flowers be spread, vide the text of Pitāmaha: "Seven leaves of Asvatthān, the rice, the flowers, and curds should be placed on the two (palms of the) hands, and then the same should be coiled round." Sumnnasnh, means flowers. Although there is a text viz.: "He should be considered pure who remains 15

1. Ch. I. 301.

2. A ग्रन्ति is the same as a कार्यपद, 'the sign.'

3. Of Nārada,

4. The *Cynodon Dactylon*.

unscathed at the seventh step while bearing the heated iron in his bands covered with seven leaves of the *Arka*<sup>1</sup> tree", still that should be understood as meaning that the *arka* leaves are to be taken in the

5 absence of the *As'vattha* leaves, as the importance of the *as'vattha* leaves is inferable from the text of *Pitāmaha* in praise thereof viz.:—"From the *Pippala* tree fire is produced, the *pippala* is known as the lord of trees; hence a wise man should spread its leaves on the hands."

10

## Śūśrapāni.

The Author states the ordeal by fire.

## Yājñavalkya, Verse 103.

If the hands have scars or sores on account of the crushing of the paddy grains, these should be noticed and in those places of scars, marks 15 should be made with lac drops. So Nārada: "On all scars and sores on the palms of the hands marked previously..... after placing seven leaves of the *pippala* tree, should encircle with seven strings." (103).

20 The Author now mentions the *mantra* invoking the Fire to be repeated by the person performing the ordeal

## Yājñavalkya, Verse 104.

"O Fire thou pervadest the innermost parts of all created beings, you are the purifier. O omniscient, declare like a witness, the truth about me from my virtues and sins."

25 Mitksharā :—*Agne twam sarvabhūtānām*, O fire you, of all beings, i. e. the viviparous and oviparous animals, the insects born of sweat, as well as the plants germinating from sprouts, *antah*, in the innermost recesses, i. e. inside their bodies, *charasi*, pervadest, i. e. remainest there as the digester of all food and drink 30 used; *Pāvaka*, purifying; i. e. the purifying cause; kave, (O) Omnicient, i. e. knowing all, *sākshivat punyapāpebhayah*

1. The *Calotropis Gigantea*.

2. Ch. V. 301.

3. चार्द्वजा: चार्द्वजा: एषाः सर्वे विज्ञातोपसेष्टुणः Manu I. 46

satyam brūhi, declare like a witness the truth about me from my virtues and sins. The oblique case in the expression punya-papebh�ah is formed by dropping the या॒ः॑. The meaning is that havioг observed my virtues and sins, speak the truth (about me).

When the iron ball is well heated by the three fires and after it is brought out by means of a pair of tongs, the person desirous of performing the ordeal standing in the western enclosure with his face towards the east, should invoke the Fire by means of this *mantra* as says Nārada<sup>2</sup>: "An iron ball fifty Palas in weight, having been made fiery, sparkling, and redhot, and after it has been heated thrice, thus should one address it in the language of truth." The meaning of this is: In order that the iron may be purified, the iron ball which has been well heated should be thrown into water, and again heated, and again thrown into water, and heating it a third time in the fire, and having then brought it forth by means of a pair of tongs, the performer (of the ordeal) should address it in the language of truth, i. e. containing truthful words, with the *mantrā*: "O fire thou pervadest all created beings &c."

The Chief Judge, however, having kindled the fire called *Laukika*<sup>3</sup>, towards the southern side of the enclosure, should offer 108 times the oblations of ghee with the *mantra* :—"This is being offered to fire the purifier", vide the text: "The (oblations of) ghee a 108 times." Having offered the oblations, and having thrown the iron ball into the fire, while the same, lying there, is being heated, he should perform the ritual described before commencing with the invocation of the God *Dharma* and ending with the offer of oblations, and while the ball is lying being heated the third time, he should address the fire in the (heated) iron ball by the following invocation:

"O Fire, thou art the four Vedas (themselves incarnate) and to thee are oblations offered in sacrifices. Thou art the mouth of

1. i. e. the gerundial नि॒न्॑ in नि॒न्॑य॑. Instead of the fuller clause "having seen my virtues &c." the construction used is "from my virtues and sins."

2. Oh. I. 289-290.

3. i. e. ordinary; as distinguished from special fires kindled on special occasions.

all gods, thou art (also) the mouth of the philosophers. Being in the abdomen of all beings, thou knowest all their good and bad deeds. Since thou purifiest the sins thou art called 'the purifier'. In the case of sins, O Fire, exhibit thyself *i. e.* appear in flames, O thou holy purifier ! while in the case of purity of the heart, be cool, O consumer of all oblations. O Fire thou-<sup>nest</sup> in the hearts of all gods as a witness. O god, thou alone knowest those things which no human being knowe. This mortal being accused at Law wishes to get himself cleared ; therefore it behoves thee to free him from this charge according to the sacred Law, *Dharma*."

## S'ûlapâni.

*Yâjñavalkya, Verse 104.*

Thereafter, after heating the iron ball, this mantra one should repeat<sup>1</sup>. "O you purifier, you wise," &c. all in the vocative case. (104).

*Yâjñavalkya, Verse 105.*

After he has addressed in that manner, he should place in both his hands a smooth ball of iron weighing fifty palas and red (heated) like fire.

Mitâks'hara:—Moreover, *tasya*, of him, *i. e.* of the performer (of the ordeal) while thus *uktavataḥ*, addressing, *i. e.* while invoking with the mantra : "O fire thou pervadest the innermost parts of all beings &c." *lauham*, the iron, *i. e.* made of iron, *pindam*, ball, *pancbâsatpalikam*, weighing fifty palas, *i. e.* of the quantity of fifty palas, *samam*, round, having no angle *i. e.* rounded and even on all sides and polished and eight fingers in length, vide the text of *Pitâmaha* : "After removing all angles and making it even, a ball of iron of eight fingers weighing fifty palas should be heated in the fire." *Agnivarṇam*, red like fire, *i. e.* resembling fire; *ubhayoh hastayoh*, in both hands, covered with the *as'icattha* leaves, 30 curds, the *durud* grass, and other things, *nyaset*, should place, *i. e.* the chief judge should deposit.

1. This is an addition in the 3<sup>rd</sup> manuscript.

S'ûlapâni.

*Yâjñavalkya*, Verse 105.

Made of fifty *palas*, an iron ball of eight fingers, made smooth without an angle and also along with the *mantra*, he should place in the hands of him—*i. e.* the performer of the ordeal. (105).

5.

What then should be done? So the Author says

*Yâjñavalkya*, Verse 106 (1).

He having taken it (into his hands) should walk through only seven circles slowly.

Mitâksharâ :—Sa, *he*, *i. e.* the man, having taken the heated 10

iron ball in the cavity of his hands, *sapta*

Page 66. *mandalâni sanaih*, *vrajet*, should walk *seven* 15

circles slowly. By the use of the term *eva*,

only, the Author indicates that the foot-steps should be placed within the circles, and that he should not go beyond the enclosure, as says Pitâmaha, “He should not go out of the enclosure, nor should he put his foot inside (the rim).”

It has been said above that “he should walk through only seven circles slowly.” There a question may arise as to where are the measurements for one *mandala* each, and what should be the space intervening between two rounds? So the Author says 20

*Yâjñavalkya*, Verse 106.

A *Mandala* or a round should be understood to be sixteen fingers (in diameter), and the *samu* should be the space intervening (between two *mandalas* or circles). 25

Mitâksharâ :—That (the length) of which is sixteen fingers is a *shadasângulakam*, *sixteen Angulas*. The circle should be understood to be of the dimension of sixteen Angulas. The *antaram*, *space intervening*, *i. e.* the distance between two circles is (to be) the same.

By saying however that he should walk through seven circles each of sixteen angulas, is meant to include the first circle in which he is standing and therefore, in all there would

30

be eight circles of sixteen fingers each, while other circles (than the one at the centre) would be seven of the same dimension. This very thing has been stated by Nārada<sup>1</sup> by the method of enumeration thus: "The interval between every two circles is ordained to measure thirty-two fingers or *angulas*. Thus the space covered by the eight circles will be a little more than two hundred and twenty-four<sup>2</sup> by the measure of *angulas*".

The meaning is this: The circle other than the first circle and at a distance of sixteen *angulas* is the second circle. Each circle being removed further on from the second and at a distance of thirty-two *angulas* from the first circle, leaving a space of sixteen *angulas*. Thus seven circles should be gone round each having an intervening space of thirty-two *angulas*. Thus the space of ground intervening between the seven *mandalas* would be two hundred and twenty-four *angulas* in terms of *angulas*.

The suffix एव् is used to indicate all inflexional cases. According to this view, after having made the central round of sixteen *angulas* in measurement, each one of the intervening spaces measuring thirty-two *angulas* and lying between the seven *mandalas* should be divided into two, and the ground of the intervening space should be fixed at sixteen *angulas*, seven *mandalas* should be created measuring twice sixteen *angulas* the breadth of each being according to the measure of the foot of the person who has to go round. As has been said by the same Author<sup>2</sup> "A round should be made as broad as his foot."

As to what has been said by Pitāmaha viz.: "Eight circles should be made, and also a ninth in the front" the first circle should be dedicated to the god *Agni* (fire), the second to (the god) *Varuṇa* (water), the third to the God *Wāyu* (wind), and the fourth to the God 30 *Yama*; the fifth is consecrated to the God *Indra*, and the sixth is said to be for *Kubera*; the seventh is for the God *Soma*, and the eighth to the *Sun*, and the ninth is for all Gods. This is the practice known to all experts in ordeals.

1. Ch. I. 285, 286.

2. In the printed edition of Narada the reading is पञ्चाशत् 'fifty-six'; thus the total would be 256.

The interval of space between every two circles is ordered to be thirty-two angulas. Thus the space covered by the eight circles is supposed to measure two hundred and fifty-six angulas. A circle should be made as broad as the foot of the person performing the ordeal. The *kus'a* grass should be spread over all the circles as dictated by the *Sāstra*.<sup>5</sup>

There (the meaning is that) after making the ninth circle which is intended for all gods and which is unlimited by any measurement of angulas, the eight circles and the eight intervening spaces together cover a space of two hundred and fifty-six angulas. There also (the number of) circles (actually) to be walked through would be seven only. Since he stands in the first and throws down the ball in the ninth, and so there is no difference as to the measurement of angulas. "Eight alanting harleys or three rice-corns make one *Angula*, twelve *Angulas* make one *Vitasti*, two *Vitastis* make a *Hasta*, and four *Hastas* (make) one *Danda*. One thousand of these (i. e. *Dandas*) make one *Kos'a*, and four of these (i. e. *Kos'as*) make one *Yojana*."<sup>10</sup> Thus should be understood (the table of measurement).<sup>15</sup>

Sūlapāni.

20

Yājñavalkya, Verse 106.

Here, the accused, taking hold of the iron ball should walk through the seven *Mandalas* (circles) made of cow-dung, more than seven. Each circle and the distance between each pair of *Mandalas*, shall be sixteen fingers. (106).<sup>25</sup>

After having gone through the seven circles what should be done? so the Author says

Yājñavalkya, Verse 107 (1.).

After he has thrown away the (ball of) fire and rubbed his hands with rice, if he is (found to be) unburnt,<sup>30</sup> he should obtain an acquittal.

Mitāksharā:—Standing in the eighth circle and after throwing away in the ninth circle the iron ball heated with fire,

having pressed the rice corns with both his hands, if it is found that his hands remain unburnt, *suddhim āpnuyāt, he should obtain an acquittal.* It follows from this that if his hands be burnt he is considered to be guilty.

- 5        One, however, who through fright stumbles and is burnt elsewhere than on the hands, even then he is not  
 \* Page 67.        considered as guilty. As says Kâtyâyana<sup>1</sup>, "If while under a charge, one stumbles and is burnt  
 10      elsewhere than at the proper spot, the Gods consider him as unburnt,  
 and he should be awarded the entire claim."

### Yâjñavalkya, Verse 107 (2).

If the ball falls down on the way, or in the case of a doubt, he should carry (it) again.

- 15      Mitâksharâ:—If while (he is) walking, the ball falls, *antarâ, on the way, i. e. even before the eighth circle is reached, or if eans'ayaḥ, a doubt arises, as to whether he is burnt or unburnt, then, tadda punrâharet, he should carry it again.* This is the rule laid down and as necessarily follows from the sense.

- Here, however, the following is the order of procedure. On  
 20      the previous day having performed the purification ceremony, the next day, the Chief Judge should mark the circles according to Sâstra, worship the presiding deities of the circles in their respective places, consecrate the sacred fire and complete the *Santi* sacrifice, and then after causing the ceremony of the consecration of the hand, by the  
 25      pressing of the rice corns &c. to be made, of the person performing the ordeal who had observed a fast, and who after having bathed was standing with wet garments in the western circle, and after tying on his forehead the leaf containing the charge by repeating the *Mantra*, the Chief Judge should invoke the God Fire when the ball  
 30      is heated a third time, and lifting with a tong the heated iron ball which had been duly addressed (by the performer), he should place it in the hands of the person performing the ordeal. And this latter

also if after walking through seven circles and throwing down the ball in the ninth remains unburnt, then he is declared innocent.

Here ends the Ordeal by Fire.

### Viramitrodaya.

Now the Author states the procedure for the ordeal by fire, 5 reached in due course

*Yājñavalkya, Verses 103, 104, 105, 106, 107.*

Tata, 'thereafter', i. e., after the process stated in the general rules of procedure for the ordeals, and the invocation of the God Dharma &c. *vimydita*, 'rubbed', i. e., crushed, *trikayo*, 'paddy', by which—of this 16 description the two hands—; *lakshayitvā*, 'marking' the Chief Judge in the palme of the hands joined together, seven white *pipal* leaves should be taken; vide the text of Nārada: "Should encircle the white hands with seven fibres of thread". Here, "Having placed the *jambī* leaves, *akṣatā* grains and also the *durvās*, these should be deposited in the leaves" has been mentioned as a special rule in another Smṛti. 15

Nārada: "In all covities in the hand one should make the previous marks; and these should again be examined and dotted with spots; thereafter, the seven leaves one should encircle with seven thread strings." 20

Thereafter, while repeating the verse, "O fire &c.", he (the Chief Judge) should place on the hands of the person performing the ordeal—and by the use of the word *api*, 'even', on the *pipal* leaves lying thereon—the iron ball weighing fifty *palas* and coloured red-hot as fire. 25

The meaning of the *mantra* is: "O Fire, *pūcana*, 'the purifier', i. e., the purifying cause; *Kava*, "Omniscient", i. e., all-knowing; *sarvabhaṭṭāṇḍam*, 'of all created beings', i. e., of all sentient beings; *antah*, 'in the innermost', i. e., inside; *charasi*, 'pervadest', i. e., move about for the purification of food, drink &c. In the expression *pūnyapdpebhyaḥ* 30 the ablative case is by the elision of the gerundial termination—the meaning is—after having examined the marks and the eins, like a witness declare the truth about me.

In this connection is a Smṛti: "An iron ball red hot like fire, sparkling and well marked, weighing fifty *palas*, having purified it again and again, by heating, the Brahmana at the third time while it is burning,

should address it.. premised by. trnht; as follows: "Listen to this law of men, which has been preceded over by the guardian deities of the world. Thou, O Fire, live within the inside of all beings; like a witness, you alone; O Fire, know things which men do not know.

5 This man accused in a court of law desires exoneretion; therefore be pleased to relieve him from this suspicion according to Dharma."

The person performing the ordeal; having taken up the iron ball should slowly walk through the seven circles. By the use of the word *eva*, 'only', is indicated the stepping of one foot in the circles and the 10 non-transgression of the circle; as says Pitamaha: "Never should he step beyond the circle; he should place his foot inside; having gone to the eighth *Mandala*, the wise should throw it in the ninth".

A *Mandala*, 'circle', moreover, should each be known to be sixteen fingers in measurement, and should have an intervening space of 15 sixteen fingers between each.

Now, if after reaching the eighth *Mandala*, and standing there, after throwing it in the ninth *Mandala*, and even after rubbing the paddy if he be *adagdhaḥ*, 'is unburnt', then he should get *suddhi*, 'acquittal, i. e. success in the point at issue. If, however, even before the eighth circle 20 (he reached) the iron ball drops down, or there be a doubt whether he was burnt or not burnt, then again also according to the procedure stated before, he should carry the iron ball in his hands.

Thus, this is the order here: "On the previous day after having observed a fast and taken his residence, the performer of the ordeal, on 25 the next day, having invoked the God Dharma with the *mantra*, 'Come, come, Oh revered Dharma', having placed on his hand the document, through the nine circles each of the dimension of sixteen fingers and each having an intervening space of sixteen fingers, and marked with rice flour or the like, while standing in the first circle, after the hands were examined and the places of scars having been marked with 30 red dye, when the iron-halls are heated three times, and after he was addressed by the Chief Judge with the words, "Hear this law prepared for men &c."," after having placed seven pipal leaves on the palms, and encircling it with seven white threads together with the 35 pipal leaves, barley, duraea, and *fami* leaves, and having placed thereon the red hot iron ball, after having in order passed through the other six circles, while standing in the eighth, should throw the iron in the ninth. Thereafter after the paddy grains were crushed by the hands, when he is found to be uncathed, he should be declared as

innocent. Even if burnt in any limb other than the hands, still he should be (regarded as) innocent. (103-107).

## S'âlapâni

## Yâjñavalkya, Verse 107.

Under the text of the Kâlikâ Purâna, viz.—“After having gone round he should throw it in the grass”, having thrown the red-hot iron ball in a heap of grass, after crushing the paddy grains, if he remain unburnt, he gets exoneration. A special rule is stated by Pitâmaha: “Then in his hands should be placed paddy grains or barley; and when after these being rubbed in the hands unhesitatingly, he remains without any injury to the end of the day, he should get an acquittal”. If it falls in the interval of the seven circles, or is burnt, or if there be a doubt, he should have the fire again”. Kâtyâyanî: “If the accused falters, or is otherwise burnt; the Gods do not consider him as burnt; to him, it should be offered again”. (107)

15  
Thus ends the Ordeal by fire.

Now the Author states the ordeal by Water

## Yâjñavalkya, Verse 108.

“Protect me thou for (the sake of) truth, O Varuna” thus having invoked (the God of) water, one should enter 20 the water navel-deep catching hold of the thighs of one who was standing in the water.

Mitâksharâ:—Varuna satyena mâmabhîraksha twam, ‘O Varuna thou shouldest protect me for (the sake of) truth’, by this mantra having abhisâpya, invoked, i. e. addressed, kam, i. e. water, catching hold of the thighs of nâbhidadhnodakasthasya, one who was standing in the water navel-deep, i. e. of a man who was standing in water to the level of his navel, the person wishing for purification, jalam pravis’et, should enter the water, i. e. should immerse himself in water.

This, however, (should be done) after the worship of the God Varuna has been finished; vide the text of Nârada. “He should first offer worship to the God Varuna with concentration by means of

fragrant besmearings, and flowers, and by means of honey, milk, ghee &c." Similarly after the general procedure is observed i. e. that beginning with the invocation of *Dharma*, and ending with the worship of all the deities, the performance of the sacrifice, and 5 the placing on the head of the document containing the plaint. For, after the Chief Judge has addressed the water rit: "O water, thou art the life of all sentient beings, wert created before the creation; thou hast been mentioned as the means of the purification of things as well as of corporate beings, 10 hence, O discriminator of the auspicious from the inauspicious, thou shouldest exhibit thyself", the person wishing for an ordeal should then invoke Varuna with the mantra "O Varuna protect me for truth &c." The places for water, have, moreover been mentioned by 15 Nārada: "In streams which have a smooth current, in oceans in rivers, in lakes, in ponds, in tanks and in pools".

So also (has been said) by Pitāmaha: "He should plunge in water which is steady, and not (that) in which are crocodiles, nor which is shallow, that which is devoid of grass or moss, and which is free from leeches and the fish; he should make the purification in water which is 20 in the holy ponds. One should always avoid the water which has been brought, as also the water in swiftly flowing rivers. He should always enter such water as is free from waves and mud." *Brought*, i. e. water brought from tanks & and stored in copper pans.

The man standing in the water navel-deep should be firm, grasp 25 a consecrated pillar made of the holy tree and stand with his face towards the east; *Vide* the text: "He should stand in water with his face towards the east and grasping the sacred post."

## S'ūlapūpi.

Now the Author states the ordeal of water

"O Varuna, 'protect me by the truth,' thus having caused the oath to be taken in regard to the water to be drunk, and by catching hold of the thighs of another man, either a Brāhmaṇa, Kshatriya, or a Vaisya, who was

standing in water to the depth of his navel, he should immerse in steady water. Pitâmaha : "The wise man should cause a circle to be made, and should devoutly honour it, and the arrows with flowers and incense, as also the bamboo bow." (108).

What should be done then ? So the Author proceeds

5

Yâjñavalkya, Verse 109,

When another swift runner brings back the arrow discharged simultaneously (with the immersion) and if he sees him with his (entire) body immersed in water, he obtains an acquittal.

10

Mitâksharâ :—When, samakâlam, simultaneously, with the immersion (of the defendant) one swift runner had gone, anyah javi, another swift runner, standing at the place where the arrow had fallen, brings back the arrow first discharged, and if he sees him (*i. e.* the person performing the ordeal) nimagnângam, his body (still) immergeed in water, then he is declared innocent.

15

This is the substance of what is (meant to be) said :—After three arrows are discharged one man endowed with a velocity goes to the place where the middle arrow has fallen, and taking it up stands there also. Another runner, also swift, stands at the place from where the arrows are discharged, *i.e.* at the bottom of the arch. When the two are thus stationed, the person performing the ordeal immerses into the water at the third clasp of the hand (of the Chief Judge.) And even simultaneously with this the man standing at the base of the arch

20

goes swiftly to the place where the middle arrow

25

\* Page 68. had fallen, and immediately after his arrival there, the one standing with the arrow held in his hand swiftly going to the base of the arch, if he does not see him (*i. e.* the performer of the ordeal) on account of his being immersed in water, then he is declared innocent.

30

This very thing has been made clear by Pitâmaha : "The running and the immersion (respectively) of the runner and of the performer of the ordeal should be simultaneous. A swift runner should go from the base of the arch to the spot where the arrow has fallen. Immediately after his arrival there, the second also quickly

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taking up the arrow should go to the base of the arch from where the first man started. If the one with the arrow in his hand, on his arrival (at the base of the arch) does not find him, because he was completely immersed under water, then he, i. e. the Chief Judge,  
5 should declare his innocence."

Nârada, moreover, has laid down the role for determining the swift runners thus: "Those two men who would stand first in running among fifty runners should be appointed for the purpose of bringing back the arrow." The arch also should be erected on a level  
10 ground near the place of immersion, and equal to a height as far as the ear of the person performing the ordeal. Vide the text of Nârada: "Having reached the place near the water an arch as high as the height (of the performer) upto the ear should be erected on a level ground".

15 The three arrows as also the bow made of bamboo should first be worshipped with auspicious things such as white flowers &c. vide the text of Pitâmaha, "First the arrows he should worship, as also the bow made of bamboo by means of auspicious articles such as smelling odours, flowers &c. and then should he begin the  
20 performance."

The measurement of the bow as also the place of the target have been mentioned by Nârada<sup>1</sup>: "A strong bow is declared to be 107<sup>2</sup> (angulas) long, a moderate bow 106, and an inferior bow 105 (angulas). This is declared to be the rule regarding the bow. With  
25 the moderate bow a wise man should discharge three arrows having fixed the target at a distance of 150 hastas; if arrows are thrown at a less or a greater distance there would be a flaw." A hundred and seven (107) means one hundred and seven of angulas; this is a strong bow. Similarly, also, about 106 and 105 (respectively). Thus  
30 the dimension of a strong bow has been mentioned to be eleven angulas in excess of four hastas, of a moderate bow, ten angulas, and of an inferior bow, nine angulas.

1. Ch. I. 307.

2. It may also mean 700, 600 and 500 Angulas respectively, the original words being एकसत्, चूर्दश and चृष्टश. The Mitakshara interprets these as a hundred plus seven, hundred plus six, and hundred plus five.

The arrows, moreover, should be made of bamboo without an iron; *vide* the text<sup>1</sup>: "For the purification, arrows should be prepared of the bamboo tree without any iron at the end, and the person discharging it should discharge forcefully". The person for discharging the arrow to be appointed, should be a Kshatriya or a Brāhmaṇa living like Kshatriya, and one who has observed a fast as has been said<sup>2</sup>: "The person to discharge (the arrow) has been laid down to be a Kshatriya, or a Brāhmaṇa living like him. He should not have any cruel thoughts in his mind, must be calm and must have observed a fast, and then should discharge (the arrow)."

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Of the three arrows when discharged, the middle one should be taken, since it has been so laid down in the Sāstra; *vide* the text<sup>3</sup>: "The middle-most arrow, however, should be taken up by a strong man." There also, the arrow should be brought from the place where it falls, not to where it moves on; *vide* the text: "The place where the arrow falls should be considered, while the spot where it moves should be avoided, since an arrow may go a long distance by moving and moving." The arrow, moreover, should not be discharged when the wind is blowing violently, nor on a ground which is uneven &c; *vide* the text of Pitāmaha: "A learned man should not discharge the arrow when the wind is blowing violently, nor on a spot which is uneven, is covered by trees, or is covered by grass, bush, creepers, plants, mud, or stones."

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By saying that "if he sees him with his entire body immersed in water he obtains an acquittal", the guilt has been declared of one whose body is seen above water. Where the person moves to another place a guilt has also been declared by Pitāmaha thus: "Otherwise there shall be no acquittal if even one limb is seen" (also) "Or by his going to a place other than that where first he was made to enter." The expression "if even one limb is seen" is used in reference to the ear &c. as there is a special text<sup>4</sup> viz: "He (the judge) may declare him also as innocent if after immersing into the water his head alone is seen, and not the ears, nor the nose."

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1. Of Kātyāyana, Verse, 442.

2. By Pitāmaha.

3. Of Nārada; Ch. I. 310.

4. Also of Pitāmaha.

The order of procedure here is this: Near the store of water as characterized above, having set up an arch of the description given before, and having fixed the target at a place and at a distance as stated, having properly worshipped the bow together with the arrows near the arch and invoked Varuna in the store of water, and offered worship to him, having moreover, on the bank (of the water) offered oblations to Dharma and other gods at the end of a sacrifice, the Chief Judge should tie the document containing the complaint on the forehead of the person wishing to perform the ordeal and thus address the water with the *mantra*. “O Water thou art the life of living beings &c.” Then the person performing

\* Page 69. the ordeal having invoked the water with the *mantra*, “(protect me) by the truth &c.” should

go near the strong man who has grasped firmly the pillar and who is standing in water navel-deep. Then, after three arrows are discharged, and after one swift runner has taken his stand at the spot where the middle arrow falls, holding in his hand the middle arrow, and another has stood at the base of the arch and when after this the Chief Judge has given three claps, the running, immersing, and bringing back the arrow should simultaneously take place.

Thus ends the Ordeal by Water.

### Viramitrodaya.

Now the Author states the procedure for the ordeal of water, reached in due course

O Varuna, *satyena*, ‘for truth’, *tvam*, ‘you’, *mā*, ‘me’, i. e., myself, *abhirakṣha*, ‘protect’. Thus having, *abhlpragāya*, ‘loudly addressed’ i. e., invoked ‘water’, *kam*. In some places such itself is the reading<sup>1</sup>. *Nābhidadhnam*, ‘navel deep’ i. e., measuring as far as the navel, of one standing there i. e., of a man, catching hold of the thigh, *īalam rīśet*, ‘one should enter the water’, i. e., should get immersed into water, the performer of the ordeal. At that time while one with a swift pace has started, another man with a swift pace who was standing at the place from which the arrow was discharged, when he brings back the

1. The several readings are अभिरक्षय, अभिरक्षाव.

arrow and has seen the performer of the ordeal with his body immersed, then he gets an acquittal.

This is what is intended to be said : At the immersion times when an arrow had been discharged and a swift runner had gone to bring it, another arrow immediately discharged thereafter another swift runner brings back, and if at that time he sees him immersed, then he becomes exonerated. Here, this is the procedure : "At the onset one should concentrate and offer worship to Waruna with sandal paste, fragrant flowers and with sweet milk, ghee &c.", so says Nārada. Thereafter, after observing the procedure as stated before viz. from the invocation to the placing of the document on the head, the Chief Judge should address the (God of) Water thus : "Oh Water, thou art moving in the innermost recesses of all created beings, and being a witness, you alone, O Water, know those things which mortals do not know. Being accused in a judicial proceeding this mortal is immersing in you, therefore be pleased to free him from this suspicion according to law." Then the performer of the ordeal should offer a prayer to the Water thus. "O Waruna, protect me for truth &c." Thereafter, in the still water when another man has entered into it, and with his face towards the East was standing still at a navel-deep spot, the Chief Judge should offer worship to the bow together with the arrows placed near an arch high upto the ear's height and erected near the place of immersion. Then a Bṛhmaṇa or a Kṣatriya who has observed a fast, discharges three arrows. When, catching hold of the thigh of the man standing in the water, the performer of the ordeal takes a plough into the water, that is one period. There one strong man with a swift pace takes the first arrow, and a similar one, another taking up the middle arrow sees the performer of the ordeal still immersed. Here Pitāmaha : "Otherwise he shall not be declared to be innocent if even one limb is seen ; or if he is seen to have gone to another place where first he was made to enter." (108-109).

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### S'ūlapūpi.

#### Yājñavalkya, Verse 109.

Synchronously with the discharge of the arrow when a very swift runner has gone to bring back the arrow, when he is gone, another man equally swift in pace taking up the middle arrow and when he comes back and sees the performer of the ordeal still immersed with his limbs in water, then the king should declare his innocence. Bṛhaspati : "Taking up the middle arrow, another man of the same calibre, returns to the

place from where the (first) man had gone, and on arrival if he does not see the man who is immersed into the water below, then his innocence should be declared, otherwise he will not be considered as innocent, even if one limb is seen."

5 Pitāmaha : "The person to discharge (the arrow) to be selected should be a *Kṣatriya*, pure in character, or even a Brāhmaṇa ; one with a not unkind heart, quiet, and who has observed a fast and has kept himself pure." (109).

Thus ends the Ordeal by Water.

10 Now the Author describes the Ordeal by Poison

Yājñavalkya, Verses 110, 111.

"O Poison thou art the son of Brahmaṇa. Thou art established in truth and virtue ; clear me from this charge. Out of (regard for) truth, be like ambrosia to me." (110).

15 Having addressed thus, he should swallow the poison called *S'āṛṅga* (or ginger) produced on the Himalaya mountains ; of him by whom the poison becomes digested without convulsions (The Chief Judge) should declare the innocence (111).

20 Mitāksharā :—With the *mantra*, *Twam vishetyādi*, "O poison &c." having addressed the poison, the person performing the ordeal should, *bhakshayet* swallow, *wlsham himaśailajam*, *poison produced on the Himalaya mountain*, i. e. produced on the mountain peaks. And when such a poison when swallowed by a men  
25 is digested, *vegairvinā*, *without convulsions*, such a one is declared innocent.

Convulsions from poison occur by the transmission of one humour<sup>1</sup> of the body with another ; *vids* the text<sup>2</sup> : "The transmission of a humour of the body into another is known as the

1. वृङ—A humour of the body. According to the principles of Aryan Medicine the principal humours which regulate the condition of the body are वायु (wind), घृत (fleis) & प्लग्म (phlegm). A disturbance in the normal condition of any of these causes all the diseases of the body.

2. Of Pitāmaha,

convulsion of poison." The humours, moreover, are seven viz. "The skin, blood, flesh, fat, bones, the marrow, and the semen". Thus the convulsions of poison would be seven also. The characteristics of these have, moreover, been mentioned in the treatise on poison *Vishatantra* thus: "The first convolution from poison brings on a horripilation, and the one next to it (cause) perspiration and the dryness of the mouth; the two next following cause in the body the change of colour and violent tremour. That which is (called) the fifth convolution brings on syncope, chocking of the throat, and the hiccough; the sixth (creates) fast breathing and coma, and the seventh causes the death of the consumer (thereof)."<sup>5</sup>

Here, moreover, the worship should be offered to the God Mahadeva, as says Nārada: "One who has observed a fast should administer (the ordeal of) poison in the presence of gods and the Brāhmaṇas, after having worshipped (the God) Maheswara by means of fragrant scents, cadiments, and with *mantras*."<sup>15</sup> The Chief Judge after having observed a fast, should worship the deity Mahadeva, and placing the poison before it, should offer worship to Dharma and others, terminating with a sacrifice, and thereafter having placed the document bearing the complaint on the head of the person performing the ordeal should thus invoke the poison:—viz.:—"O poison thou hast been created by Brahman for testing the wicked, (therefore O) expose the soul of the sinners, while be like ambrosia to the pure-minded. O poison thou who art Death incarnate, thou hast been created by Brahman, free this man from this (charge of a) sin and become nectar to him by (regard to his) truth."<sup>20</sup>

Having thus invoked, he should give it to one who is standing with his face turned towards the south; *vide* the text of Nārada: "To one who is standing with his face towards the South, and also in the presence of the twice-born, with his face turned towards the North, or the East, and with concentrated mind he should administer the poison."<sup>25</sup>

The poison, moreover, to be taken should be the *Vatsanābha* poison or the like; *vide* the text of Pitāmaha: "Of the *vatsanābha* from the mountain heat or of a poison produced on the Himalayas."<sup>35</sup>

1. These are वृक्ष, अवृक्ष, पात्र, भेद, अस्ति, पत्ता & शुक्र.

The poisons to be discarded have similarly been laid down : "Distilled poisons, as also poisons which are old, or are artificially prepared, and those produced from the earth—all these poisons should be entirely excluded". Also by Nārada<sup>1</sup>: "Purified poison, as well as poison which has been distilled, similarly, scented and mixed poison, as also the Kālakūta and the Alabu poison, should be carefully avoided."

The time also has been mentioned by Nārada<sup>2</sup>: "Having weighed the poison which is intended (to be given), it should be administered at a time when the winter has set in. A man knowing 10 the Dharma must not administer it) in the afternoon, nor in the twilight" In any other period, however, a less quantity than that laid down as the standard, should be given, vide the text<sup>3</sup> : "Four yavas should be given in the rainy season, and it has been laid down that five yavas should be given in the Grīshma. In the Hemanta it 15 should be seven yavas, and in the Śārad even less than that". By less is meant six yavas. By the mention of Hemanta, Sīśira also is included ; vide the Śruti text viz.: "By the combination of Hemanta and Sīśira."

Since Vasantā has been regarded as a period common for 20 (the administration of) all ordeals generally, seven

\* Page 70. should be given during that season, and the poison also should be given after it is covered with clarified butter; vide the text of Nārada<sup>4</sup>: 'Let him give to the person performing the ordeal, one-eighth less than twentieth part of a sixth part of a Pala of the poison, mixed with clarified butter.' A Pala here, moreover, is equivalent to four gold coins. Its sixth part would be ten Māṣha and fifteen Yavas. Three yavas make one Krishnpala, and fifteen Krishnpalas make one Māṣha ; thus fifteen yavas make one Māṣha.<sup>5</sup>. In this way the (number of) yavas in ten Māṣhas would be one hundred and fifty, and this together with the ten yavas mentioned above make up (the total of) 160 yavas—

1. Ch. I. 321. दुष्टः. Another reading is दुष्ट—spoiled poison.

2. Ch. I. 319 and 320.

3. Nārada Ch. I. 324.

4. Ch. I. 323.

5. दुशात् is a better reading. दुष्ट दुशात् appears to be wrong.

this is the sixth part of a Pala. A twentieth part from this would be 8 yavas. A twentieth part less by one-eighth of this i. e. less by one yava i. e. seven yavas he should give mixed with clarified butter. The clarified butter should moreover be taken thirty times the quantity of poison, *vide* the text of Kātyāna<sup>1</sup>: "The poison should be administered to men<sup>2</sup> in the forenoon and in a cool place; it should be pounded and smooth, and should be mixed with clarified butter thirty times the quantity (of the poison)" i. e. the poison (should be) mixed with clarified butter thirty times its quantity.

The person performing the ordeal should, moreover, be protected from sorcerers &c ; *vide* the text of Pitāmaha viz.: "The king should protect the person about to perform the ordeal from the danger of sorcerers &c. by guarding him with his own men for three or five days. He should also examine and see if there are hidden on his body any medicines, or spells, or any jewels which are effective as antidotes against poison, as also those secretly produced." Similarly the poison should also be guarded. *Vide* the text of Nārada<sup>3</sup>: "Poison from the mountain peak which is obtained from the Himalayas, is the best as ordained; such as has the colour, flavour, and taste, which is unartificial, not tempered, and which is not over-powered by any charms."

Similarly after the poison has been swallowed he should be watched for (an interval of) 500 claps of the hands, and thereafter should be examined, as says Nārada : "If after an interval of 500 claps of the hands he remains free from any effect (of the poison), then he is considered to be innocent; thereafter he should be examined". The interval of time however stated by Pitāmaha i. e. till the end of the day, has a reference to a small quantity of poison. "After swallowing it if he remains steady and without a swoon, and does not vomit and otherwise remains free from any effect till the end of the day, he should then be declared as innocent." Here also the procedure is as follows ; the Chief Judge after having observed a fast and worshipped the God Mahādeva should place the poison before it, and after having offered a sacrifice to Dharma and other deities,

1. Verse, 450.

3. Ch. I 322.

2. देहिनां Lit: corporate beings.

and placed the document containing the complaint on the head of the person wishing to perform the ordeal, should address the poison and offer it to him who is seated with his face turned towards the South; the person performing the ordeal too should take the poison after addressing it.

5 Here ends the Ordeal by Poison.

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Viramitrodaya.

Now the Author states the ordeal by Poison

Yājñavalkya, Verses 110, 111.

10 “O Poison &c.”, with this verse having addressed the poison, one should eat. He, moreover, by whom it becomes digested without convulsions, of him the Chief Judge should declare the innocence. The *Sṛṅga* or ginger poison is well known as *singha*, as has been said : “Having the luster of a goat’s horn, blue in colour, and produced on the 15 Himalaya mountain, pure, having the luster of ginger, of a fine yellow colour, and unsurpassed.”

“The transmutation of a humor of the body into another is known as the conclusion of poison.” Its characteristic is, horripilation, swoon, &c. An ordeal of that.

20 The procedure here is this: The Chief Judge having observed a fast, and worshipped Mahādeva, and having placed before Him the poison, having performed the worship of Dharma terminating with the sacrificial oblations, placing the document of declaration on the head of the performer of the ordeal should then address the poison with this 25 mantra : “O poison, thou hast been created by Brāhmaṇa for testing the wicked ; (therefore) expose the soul of the sinners, while he like ambrosia to the pure-minded. O poison, thou art Death incarnate, thou hast been created by Brāhmaṇa ; free this man from this (charge of a) sin, and become nectar to hand by (regard to his) truth.” Thereafter to 30 the performer of the ordeal with his face turned towards the South, himself with face to the North or the East, in the presence of the Brāhmaṇas, he should give refined powdered poison mixed in clarified butter. By regard to particular seasons, particular proportions also have been mentioned in this connection by Nārada’ : “Having weighed 35 the poison which is intended (to be given), it should be administered at

Yâjñavalkya  
Verse 110-112.]

n time when the winter hæ set in ; not in the afternoon nor in the noon, nor even in the twilight, should one knowing the Dharme (edminister it). In the rainy season, the measure is four yavas, and five yavas have been stated to be in the Grishma ; in the Hemanta, it is seven yavas, and in the Sarad, even less than that". "Less", i.e. six yavas. Thereafter, the performer of the ordeal having addressed with the verse "O poison, thou &c." should consume it. (110-111).

Here ends the Ordeal by Poison.

## S'ûlapâni.

The Author states the ordeal by Poison.

Yâjñavalkya, Verses 110, 111.

'Sûrngam,' i.e., "Having the lustre of a goat's horn, blue, and produced on the Himalaya mountain, and in the effect having the lustre of ginger, extremely cooling and unsurpassed". Having taken in the hand such poison, and addressed with the verse "O poison, &c.", and consumed in the stated quantity, one in whose case it becomes digested without any convulsion, swoon, &c., that man shall be (declared to be) innocent. In some hooks, the following verse is stated as to be repeated (by him), "O poison thou art the son of Brâhman, established in the laws of truth; pray free me from this accusation, and by the (force of) truth be ambrosia to me." (110, 111).

Thus ends the Ordeal by Poison.

Now the Author describes the Ordeal by Kos'a

Yâjñavalkya, Verse 112.

Having worshipped the stern deities, he should collect the water in which they were bathed. Then after reciting (the formula), he should make the person drink therefrom three handfuls of water.

Mitâksharâ :—Ugrân Devân, stern dities, i. e. such as Durgâ, Âditya &c; samabhyarchya, having worshipped, i. e. worshipped with the sandal-paste, flowers &c. and after having bathed tat snânodakmâharet, he should collect the water in which they were bathed. After collecting it, the chief Justice should address it with the *mantra* "Oh water, thou art the life of all sentient beings &c.", and putting that water into another vessel he should pâyayet

prasṛtitrayam, cause three handfuls of the water to be drunk, by the person performing the ordeal after the repetition of the mantra, "O Waruṇa protect me for the truth &c." This, moreover, should be done after the general procedure viz. the invocation of Dharma, the worshiping of all deities, the offering of the sacrifice, and the placing (on the head) of the document containing the complaint &c. has been observed.

Here also, the rule as to the deity to be bathed, the rule as to the procedure, as also the rule as to who is entitled to this ordeal have been stated by Pitāmaha thus: "Of that deity whose devotee he is, the water should be caused to be drunk by him. In the case of an equal regard for all the deities, the water of Āditya should be given to be drunk. The water of Durgā should be given for drinking to the thieves, as also to those who make a living upon their weapons. In the case of Durgā the trident should be bathed, while of Āditya, the circle should be bathed, so also the weapons of other Deities too should be bathed." This is the rule about the deities.

The rule as to the procedure is: "In cases of trust, in all cases of suspicion, and also in a compromise—i.e. these the Kesa should be administered, always for the purification of the mind".

"The drinking of the Kesa water is ordained in the forenoon for one who has observed a fast, has bathed, and

\* Page 71. has a wet cloth on, who is a believer, and who is free from vices." Sas'uka is a believer. "The

wise should not offer the Kesa to the drunkard, to the, voluptuous as also to the rogues, and to those who are unbelievers<sup>1</sup>. The drinking of Kesa should be avoided in the case of great criminals, irreligious or ungrateful men, eunuchs, low Brāhmaṇas, unbelievers, Vratyas and slaves." Mahāparudha means a great crime. Irreligious i.e. who does not observe the duties laid down for the Varṇas in the several stages i.e. who is an atheist. Locborn i.e. born of a Pratiloma union. Slaves i.e. fishermen. This is the rule as to the capacity of persons.

Moreover, after preparing a circle with the cow-dung, the person wishing to perform the ordeal should be seated facing the Sun, and

1. Nārada I 332.

Yâjñavalkya]  
Verse 113.]

then he should be made to drink. This is the rule to be deduced from the text of Nârada: "Having called him who has been accused, and made him seated in the centre of a circle, and with his face towards the Sun, he should be made to drink three handfuls."

It may be asked, in the case of ordeals beginning with the balance and ending with the poison the decision as to the innocence or guilt is immediate, what however in the case of *kos'a*? so the Author says

Yâjñavalkya, Verse 113.

He on whom no calamity falls either by the act of the King, or of God within fourteen days, is innocent (and) there is no doubt.

Mitâksharâ:—Chaturdas'âdannhah, before fourteen days, yasya, on whom, râjikam, by the act of the king, i. e. by reason of the king, (or) daivikam, by the act of God, i. e. caused by God, vyasanam, calamity, i. e. trouble, ghoram, dire, i. e. great; no, is not, i. e. certainly never, jâyate, falls, a minor one being unavoidable in the case of corporate beings—Sa s'uddhah, he should be considered to be innocent.

If it fall after the interval there is no blame. As says Nârada<sup>1</sup>: "If a great misfortune even should befall him after the lapse of a fortnight, he must not be harassed by any one, since the fixed period has elapsed." This text is self-apparent. The rule "within fourteen days" is with reference to serious charges, since it comes to be mentioned after the prefatory observation. "These in the case of serious charges."<sup>2</sup> The other intervals mentioned by Pitâmaha, have a reference to petty charges; *vide* the text: "This *kos'a* may be administered even in a petty case." These are (as mentioned in the text): "He in whose case a misfortune is seen

1. Ch. I 331.

2. See above yajn. Ver. 95 Text p. 57. 1, 25. Eng. Tr. p. 909.

3. Of Pitâmaha.

within three, seven, twelve or fourteen days, is considered to be guilty." These three intervals of time have to be adjusted by dividing the amount at stake which is less than the amount of a serious charge, and by allotting the periods of three days &c. to each portion respectively.

Thus ends the Ordeal of *kos'a*.

### Viramitrodaya.

Now the Author states the ordeal of the *Kos'a*

Yājñavalkya, Verses 112, 113.

Having offered worship to the stern Deities, the Chief Judge should take up the bath-water of the Deity. The aternoses, moreover, has been expounded by Pitāmaha thus: "Of that Deity, whose devotee he is, the water of it should be caused to be drunk by him. In the case of an equal regard for all the deities, the water of Āditya should be caused to be drunk. In the case of Durgā, the trident should be bathed, while of Āditya, the circular halo; in the case of other deities, the weapons should be bathed".

*Tasmāt*, 'from it', i. e. from the bath-water, *prasṛtitrayam*, 'three handfuls' of water having made to trickle', he should be made to drink. Of one who has drunk the water no calamity from the king or fate, or any other difficulty such as a dangerous disease of a malignant type for an interval of fourteen days, *sa śudhīḥ*, 'he is declared innocent' i. e. becomes successful. The meaning is that on an absence of a calamity within the time limit, no suspicion can stand. By the use of the word *tu*, 'however', is excluded the mixture of any other water. "He, in whose case a misfortune is seen within three nights, or seven nights, or twelve days, is declared to be guilty," this text of Pitāmaha has reference to accusations of a faulty or very faulty character; thus there is no contradiction.

Hers, moreover, this is the Procedure: Having prepared a circle with the cow-dung, and having placed the performer of the ordeal with his face towards the Sun, and performing the ritual ending with the placing of the document on the head, and after offering worship to the stern deities, from their bath-water taking three handfuls of water and having

1. द्वयैः. This is the reading in *Viramitrodaya*. The *Mitāksharā* reads द्वयैः.

addressed it: "O Water thou art.....of the sentient beings &c."..... "O Varuna, protect me by truth", he (the Chief Judge) should cause the performer of the ordeal to drink. (112-113).

Thus ends the ordeal of Kōṣā.

### S'ūlapāpi.

Now the Author states the ordeal of kōṣā

Yājñavalkya, Verse 112.

Having respectfully offered worship to stern deities, and having brought their bath-water, and after repeating the offence charged against himself, with face turned towards them, he should take three handfuls of the water. Pitāmaha states a special rule: "Of that deity of whom the particular man is a devotee, he should be made to drink the water. In the absence of any particular deity, he should be made to drink the water of Aditya. Within fourteen days' interval if no dire calamity from the king or fate occur to him, he should be declared to be innocent without doubt." 'Calamity,' i.e. an accident. 'Dire,' i.e. causing extreme pain. The rest is plain. Pitāmaha: "If within three nights, or within seven nights, or within twice seven days, any misfortune is seen to occur to a man, such a one is a sinner." Kātyāyana<sup>1</sup>: "If a calamity due to fate occurs within three weeks, the accused should be compelled to pay the amount, and also a fine. Not of himself only, but if it accrue to his relatives, such as a disease, fire, death of a kinsmen, he should be compelled to pay the amount and a penalty. A wasting disease, diarrhoea, eruptions, pain in the palate and joints, eye disease, throat disease, and the colic pains are regarded as divine calamities for men."  
25

Thus ends the ordeal by Kosha.

### OTHER ORDEALS.

The five principal ordeals beginning with the Balance and ending with the Kōṣā, have been expounded as proposed by the Lord of the Yogie.  
30

Other ordeals have been mentioned in another Smṛti having a reference to petty complaints, as says  
Rice. Pitāmaha<sup>2</sup>: "Now I proclaim the rule regarding the grains of rice which have to be chewed (by the party). This rice ordeal should be administered in  
35

1. Verses 456-458.

2. cf. Also Nārada Ch. I. 337-342.

cases of larceny, but on no other occasion whatsoever ; this is certain. Let the judge who must have cleansed himself previously, use white grains of rice, and not of any other (corn), and let him place the same in an earthen vessel in the sight of the Sun. After having 5 mixed them with water used for the bath (of the image of the Sun), he shall cause it to remain there. (In the next morning) one who has observed a fast and has bathed, on whose head the document containing the complaint has been placed, and who is seated facing towards the East, should be asked to chew the rice-grains and then 10 to spit (the same) on a leaf of the holy fig tree and of none else, and when that is not available then on a leaf of a hirch tree. He whose blood issues forth, or whose chin or palate becomes rotten, or the limbs shake, must be pronounced guilty."

The Chief Judge should cause one on whose head the 15 document containing the complaint has been placed to chew the rice grains and to spit.

The form "having caused to chew" is gerundial. The general procedure which is common to all ordeals, viz. the invocation of Dharma &c. should be followed here also.

The ordeal of the heated *Mâsha* has been described by Pitâmaha thus : "A circular pot measuring Heated *Mâsha* sixteen angulas with a depth of four angulas should be made either of gold, silver, copper, or 25 of earth, of circular size. And the same should be filled with clarified butter or oil weighing twenty palas, and then when this is heated well, a gold *mâsha* should be thrown into it. He (i. e. the person performing the ordeal) should raise the heated *mâsha* by means of the forefinger and one or two fingers near it. He who 30 does not shake his fingers, or on whom no boil is produced, is deemed under the law to be innocent since his hand and fingers were unaffected. By the expression "should raise" is meant simply picking up from the vessel and not "throwing out".

addressed it: "O Water thou art.....of the scotint beings &c.".....  
 "O Varṇa, protect me, by truth", he (the Chief Judge) should cause  
 the performer of the ordeal to drink. (112-113).

Thus ends the ordeal of Kos'a.

5

### Sūlapāṇi.

Now the Author states the ordeal of Kos'a

Yājñavalkya. Verses 113.

Having respectfully offered worship to stereo deities, and having brought their bath-water, and after repeating the offence charged against himself, with face turned towards them, he should take three handfulls of the water. Pitāmaha states a special rule: "Of that deity of whom the particular man is a devotee, he should be made to drink the water. In the absence of any particular deity, he should be made to drink the water of Āditya. Within fourteen days' interval if no dire calamity from the king or fate occur to him, he should be declared to be innocent without doubt" "Calamity," i.e. an accident. 'Dire,' i.e. causing extreme pain. The rest is plain Pitāmaha: "If within three nights, or within seven nights, or within twice seven days, any misfortune is seen to occur to a man, such a one is a sinner." Kātyayana: "If a calamity due to fate occurs within three weeks, the accused should be compelled to pay the amount, and also a fine. Not of himself only, but if it occurs to his relatives, such as a disease, fire, death of a kinsman, he should be compelled to pay the amount and a penalty. A wasting disease, diarrhoea, eruptions, pain in the palate and joints, eye disease, throat disease, and the colic pains are regarded as divine calamities for men."

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Thus ends the ordeal by Kos'a

### OTHER ORDEALS.

The five principal ordeals beginning with the Balance and ending with the Kos'a, have been expounded as proposed by the Lord of the Yogis.

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Other ordeals have been mentioned in another Smṛti having reference to petty complaints, as ease Rice. Pitāmaha: "Now I proclaim the rule regarding the grains of rice which have to be chewed (by the party). This rice ordeal should be administered in

1. Verses 456-458.

2. cf Also Nārada Ch. I. 337-342.

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cases of larceny, but on no other occasion whatsoever ; this is certain. Let the judge who must have cleansed himself previously, use white grains of rice, and not of any other (corn), and let him place the same in an earthen vessel in the sight of the Sun. After having 5 mixed them with water used for the bath (of the image of the Sun), he shall cause it to remain there. (In the next morning) one who has observed a fast and has bathed, on whose head the document containing the complaint has been placed, and who is seated facing towards the East, should be asked to chew the rice-grains and then 10 to spit (the same) on a leaf of the holy fig tree and of none else, and when that is not available then on a leaf of a birch tree. He whose blood issues forth, or whose chin or palate becomes rotten, or the limbs shake, must be pronounced guilty."

The Chief Judge should cause one on whose head the 15 document containing the complaint has been placed to chew the rice grains and to spit.

The form "having caused to chew" is gerundial. The general procedure which is common to all ordesla, viz., the invocation of Dharma &c. should be followed here also.

Thus ends the Ordeal of Rice.

The ordeal of the heated *Mâsha* has been described by Pitâmaha thus : "A circular pot measuring sixteen angulas with a depth of four angulas should be made either of gold, silver, copper, or 25 of earth, of circular size. And the same should be filled with clarified butter or oil weighing twenty palas, and then when this is heated well, a gold *mâsha* should be thrown into it. He (i. e. the person performing the ordeal) should raise the heated *mâsha* by means of the forefinger and one or two fingers near it. He who 30 does not shake his fingers, or on whom no boil is produced, is deemed under the law to be innocent since his hand and fingers were unaffected. By the expression "should raise" is meant simply picking up from the vessel and not "throwing out".

Page 72.

Another process:—"The Judge after having cleansed himself, should throw clarified butter of the cow into a golden, silver, copper, iron, or earthen vessel, and should heat the same on fire. He shall then throw into it a polished coin bearing an impression and made either of gold, silver, copper, or iron. The pot (which has been heated to boiling) in which waves and circles are rolling and rising up, and which is incapable of being touched even at the nail-points (of the fingers,) he should test it by means of a green leaf (being dipped into it) and thus producing a crisp<sup>1</sup> sound. And then he should address it by the following *mantra* viz: "O clarified butter thou art the purest of all things, thou art the ambrosia at a sacrifice. Burn this man, O purifier, if he is guilty, and be as cold as ice if he is innocent." He should cause the coin lying in the clarified butter to be caught by the person (wishing to perform the ordeal) who has observed a fast, and who has then hathed and has wet clotheen on. The umpires should then examine his forefinger. He on whom no boils are seen is to be considered innocent, otherwise he is guilty". Here also should be observed the ceremony of invoking the Dharma &c. The address to the clarified butter is to be by the Chief judge; the *mantra* to be addressed by the performer of the ordeal is "O fire thou art of all sentient beings &c.". From the text "they should examine the forefinger," the picking up of the coin is to be made by the forefinger only.

Thus ends the Ordeal of the heated Māsha.

The ordeals of the Dharma and Adharma have been mentioned by Pitāmaha thusa: "Now I shall describe the test by Dharma and Adharma in the case of men who are guilty of assault, who are pressed for payment, and those who desire to perform the expiatory ceremony." Guilty of assault i. e. in charges of assault. Who are pressed for payment i. e. in money claims. Who desire to perform an expiatory ceremony i. e. in

1. ग्रिस्ति is the particular sound which is produced at the combination of fire and water c/o the Marathi gr.

Yajuravallya ]  
Ordeals ]

a Brâhmaṇa to be sworn by his veracity, a Kshatriya by his chariot or the animal he rides on and by his weapon, a Vais'ya by his kine, grain and gold, and a Sudra by (the imprecation of) all the heinous sins"

Here, moreover, the index of the innocence has been given by Manu<sup>1</sup>—viz “He who meets with no speedy misfortune, must be held innocent on (the strength of) his oath” The misfortune also has been stated above in the text<sup>2</sup> ‘On whom no calamity falls either by the act of God or that of the king’ The rule as to the duration of time also should be observed to be to commence from one night and to extend to three nights, commencing from the third night and extending as far as the fifth night, or of one night &c, after determining the importance or pettiness of the case in hand The penalty also has been mentioned by Kâtyâyana<sup>3</sup> when thus the success or defeat of a party has been determined by means of ordeals, “The innocent should be caused to be paid half of a hundred and the guilty becomes liable to punishment” He<sup>4</sup> mentions the penalty “In the case of the ordeal of poison water, fire, balance, kos'a, and rice, as also in the ordeal of the heated masha the penalty should be determined respectively as follows —viz one thousand, six hundred, and five hundred, four, three, two, and one hundred, respectively, the lesser form to be selected in the case of pettier offences” By reason of the text<sup>5</sup>—“When upon a denial, a claim is proved he should pay (the amount)” &c in which a penalty has been mentioned, this penalty under the (law of) ordeals comes to be an addition (to it)

Thus ends the chapter on *Ordeals*

### Viramitrodaya

Now in the case of petty accusations, the four ordeals such as the Rice and the rest, not particularly stated by the Author of the Work, are being stated Thas Pitamaha (same as on p 971 lines 34-35 and p 972 ll 1-13 lines above) Here moreover, the invocation

1 Ch VIII 115

2 Yaj II 113 See p 909 above

3 Verse 452

4 Kâtyâyana Verses 460, 461

5 Yaj It 11 sec above p 686 ll 13-34

of the Dherma and the other procedure should be understood to be for the three (ordeals) which will be stated hereafter. Moreover, "A pot made either of gold, or of silver, or of copper, or even of earth, with a depth of four angulas and measuring sixteen angulas and 5 of a circular shape, he should fill with clarified butter and oil weighing twenty *palas*, and after it is boiled to a heat, a gold *māsha*, should be thrown into it. He should take out the heated *māsha* by joining the thumb and a finger. He who does not shake the forefront of his head or on whom no eruption has been produced, 10 is deemed under the law to be innocent, since his hand and the fingers were unaffected." *Mandalam*, i.e. a circle; *uddharet*, 'take out', i.e. take outside (the pot).

Bṛhaspati: "Iron twelve *palas* in weight formed into shape is called a plough-share; it should be eight *angulas* in length and four *angulas* in breadth. That (plough share) having been made red-hot in fire, the thief should lick it once with his tongue. If he remains unscorched, he obtains an acquittal; otherwise, however, he loses his cause."

Pitāmaha describes the ordeal of Dharma (see above p. 973  
20 II. 27-33 and p. 974 II. 1-22).

Now the Oaths. There Manu: "A Judge should swear a Brāhmaṇa by the truth; a Kshatriya by his vehicle and weapons; a Vaishya by the kine, seeds and gold; while a Sudra with all the sins; or these should be made to touch the heads of their sons and wives."

25 "Should this have been committed by me, then the sin generated by the transgression of truth should be mine", thus a Brāhmaṇa should be made to say. "Should this harm have been done by me then my conveyances and arms may become unsatisfactory", thus should a Kshetriya be made to declare; and so on further.

30 Halāyudha states the meaning of this text in substance to be thus: "This is true," thus a Brāhmaṇa should be made to affirm; a Kshetriya should be made to touch the conveyance and weapons; a Vaishya should be made to touch the cow &c. and the sin which is generated by false oaths, with that he should enjoin a Sudra falsifying an oath. All should be made to do as stated before".

Bṛhaspati: "Truth, a vehicle, weapons, cows, seed, and gold; the feet of the Gods or of the Brāhmaṇas, the heads of sons or wives; these

1. Ch. X. 28, 29.

2. Ch. VIII. 114, 115.

3. Ch. X. 6, 7.

are stated to be for oaths by Manu in small matters". Here, as an oath is distinct from an ordeal, there is no fasting &c., but only bathing and sipping water.

S'ankha: "The staking of the merit generated by pious<sup>1</sup> and charitable deeds &c., and should also cause other oaths to be taken." 5

Manu<sup>2</sup>: "One falsifying an oath perishes here and after death. In connection with amorous women, in regard to marriages, in the feeding of cows, as also regarding fuel, and for protecting a Brāhmaṇa, by taking a false oath, there is no sin". 'In connection with amorous women' i. e. in private, for keeping the woman pleased. 'In marriage' i. e. by women for the husband. For the feeding of the Cows, fuel, for the performance of the daily oblation; also for the saving of the life of a Brāhmaṇa, a cow &c., even by a false oath, no sin is incurred. This is the meaning.

Here in the Commentary on Śrimat Yājñavalkya  
ends the Chapter on Ordeals

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### S'ūlapāṇi.

In the course of the discussion are mentioned the Rice, &c. Hero Pitāmaha: "In the case of theft the rice should be administered, and not elsewhere; this is certain. Pure rice should be caused to be prepared from paddy grains and not of any other. In an earthen pot one should place it in front of Aditya, after having purified oneself. These should be mixed with the bath water; at night he should be made to stay there. In the early dawn, it should be given to the performer, with his face towards the Sun. After chewing the rice he should be made to emit on a leaf three times. He whose blood appears to nose, or the tooth-row is affected with pain; one whose limb gets a shake, such a one the Judge should declare as not innocent."

Now the ordeal of the Heated Mūḍha.

One should cause to be made an iron vessel, or one of copper or sixteen angulas, and of four angulas (in depth) or of earth either, of a circular shape; and should fill it with clarified butter and oil of the quantity of twenty palas; when it is well boiled, one should throw a gold

1. गृहि—Pious and charitable deeds such as performing sacrifices, digging tanks, etc. see p. 806, n. 2 above.

2. Ch. VIII. 112, 113

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másha in it. He should take out the heated másha with the fore-finger and another finger joined together. Where neither the forepart of the hand is burnt, nor a boil appears, such a one is regarded as innocent according to law, as is the text of Pitumaha. *Mandala*, 'n circle'.

5 Now the ordeal of the Plough share—Phála (same as in the Viramitrodaya at p. 976, above).

Now the ordeal about Dharmaja—Result of Dharma.

There Bṛhaspati<sup>1</sup>: "On the leaves should be painted (the images of) Dharma and Adharama in black and white colour, (respectively). Then 10 they should be invoked with the *Mantras* inducing vitality and others, as also with the Gāyatri and Samas. Thereafter one should offer worship with sandal paste, and flowers, also white and dark. Having sprinkled with the five bovine products, and enclosed in balls made of earth, having made (them) equal in size, these should be placed unobserved in a new jar. 15 Thereafter the performer of the ordeal should take one ball out of the vessel when asked (by the Judge). If Dharma is taken, he is acquitted; otherwise he is declared guilty".

Thus ends the ordeal of Dharmaja.

Now the Oaths: Nārada<sup>2</sup>: "Truth, the conveyances and weapons, 20 cows, seeds and gold, the feet of the Deities and of the Brāhmaṇas; and meritorious acts as may have been performed. These have been stated as (the objects for) oaths by Manu in small matters".

Also Manu<sup>3</sup>: "By the truth should a Brāhmaṇa be affirmed; a Kshatriya, by the conveyances and weapons; with the cows, seeds, and gold, a Vaisya; while a Sudra with (the imprecation of) all the sins". (113)

Thus ends the Chapter on Ordeals.

1. Ch. X. 30-34.

2. This is not found in Nārada. But see Bṛhaspati X. 67.

3. Ch. VIII. 173.

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